Supreme Court, U.S.
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No. 06-333

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In The
Supreme Court of the United States

PHELPS DODGE CORPORATION,

Conditional Cross-Petitioner,

vs.

SAN CARLOS APACHE TRIBE; STATE OF ARIZONA; GILA RIVER INDIAN COMMUNITY; ASARCO LLC; SAN CARLOS IRRIGATION AND DRAINAGE DISTRICT; CITY OF SAFFORD; GILA VALLEY IRRIGATION DISTRICT; FRANKLIN IRRIGATION DISTRICT; SALT RIVER PROJECT; CITY OF GOODYEAR; BHP COPPER INCORPORATED, and UNITED STATES OF AMERICA,

Cross-Respondents.

On Petition For Writ Of Certiorari To The Arizona Supreme Court

PHELPS DODGE CORPORATION'S CONDITIONAL CROSS-PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the Arizona Supreme Court err when it found that claim preclusion did not bar the San Carlos Apache Tribe from seeking additional rights to waters from the Gila River's tributaries where the tributaries were within the geographic scope of the *Globe Equity* adjudication in which the United States sought determination of all the Tribe's rights to the waters of the tributaries and where the *Globe Equity* parties did not split their claims to the tributaries through an express and clear statement in the consent decree?

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT PURSUANT TO RULE 29.6

As set forth in the San Carlos Apache Tribe's (the "Tribe") Petition for Writ of Certiorari, No. 06-173, at p. ii, thousands of parties have filed claims in *In Re the General Stream Adjudication of All Rights to Use Water in The Gila River System and Source*, W-1, W-2, W-3, W-4 (consolidated) (the "Gila River Adjudication"), but have not filed notices of appearance or participated in the Contested Case W1-206 from which this Conditional Cross-Petition arises.

The Parties to the W1-206 contested case who participated and appeared in the proceeding before the Arizona Supreme Court, Case Number WC-02-0003IR, are the Petitioner San Carlos Apache Tribe (the "Tribe"), the Respondents United States of America, the Gila River Indian Community (the "Community"), ASARCO LLC, San Carlos Irrigation and Drainage District, the City of Safford, Gila Valley Irrigation District, Franklin Irrigation District, Salt River Project, City of Goodyear and BHP Copper Incorporated, and Respondent/Conditional Cross-Petitioner Phelps Dodge Corporation ("Phelps Dodge").

Phelps Dodge has the following parent corporations:

None

Publicly held companies that own 10% or more of Phelps Dodge's stock are the following:

None

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Phelps Dodge's Conditional Cross-Petition raises an important issue fundamental to the efficient and effective operation of our judicial system – the finality of court judgments. More than one hundred years ago, this Court recognized that the finality of judgments ensures

> the very object for which civil courts have been established, which is to secure the peace and repose of society by the settlement of matters capable of judicial determination. Its enforcement is essential to the maintenance of social order; for the aid of judicial tribunals would not be invoked for the vindication of rights of persons and property if, as between parties and their privies, conclusiveness did not attend the judgments of such tribunals.

Southern Pac. R.R. Co. v. United States, 168 U.S. 1, 49 (1897). This Court has further recognized that "[c]ertainty of rights is particularly important with respect to water rights in the Western United States. The development of that area of the United States would not have been possible without adequate water supplies in an otherwise water-scarce part of the country." *Arizona v. California*, 460 U.S. 605, 620 (1983) ("*Arizona II*"). Indeed, "[t]he policies advanced by the doctrine of *res judicata* perhaps are at their zenith in cases concerning real property, land and water." *Nevada v. United States*, 463 U.S. 110, 129 n. 10 (1983).

In accordance with these policies, the doctrine of claim preclusion, also known as *res judicata*, provides that

> when a final judgment has been entered on the merits of a case, '[i]t is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain

> or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose.'

Id. at 129-30 (quoting *Cromwell v. County of Sac*, 94 U.S. 351, 352 (1876)). This is true even if the earlier judgment may have been wrong or rested on a legal principle subsequently overruled in another case. *Federated Dept. Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981).

The Arizona Supreme Court decided this important question of federal law in a manner that conflicts with the decisions of this Court in *Nevada* and *Arizona II*. The Arizona Supreme Court held that claim preclusion did not bar the Tribe, or the United States on its behalf, from seeking in the Gila River Adjudication rights to waters from the tributaries[1] of the Gila River in excess of the water rights awarded to the Tribe in the consent decree[2]

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[1] As explained later, when Phelps Dodge uses the term "tributaries," it means those tributaries within the scope of the *Globe Equity* litigation, except the San Carlos River. The scope of the *Globe Equity* litigation is the Gila River beginning ten miles east of Arizona's border with New Mexico and terminating at the Gila's confluence with the Salt River. The term "tributaries" also excludes the San Carlos River for the Tribe because the United States expressly excluded the San Carlos River in two paragraphs of the Amended Complaint when describing the rights it was seeking for the Tribe. Phelps Dodge has taken no position on what was intended by this exclusion. Various parties, including the Tribe, the Community, and ASARCO have claimed rights to the San Carlos River. The Arizona Supreme Court rejected ASARCO's claim, *In Re the General Adjudication of All Rights to Use Water in The Gila River System and Source*, 127 Ariz. P.3d 882, 893 at ¶¶ 35-36 (Ariz. 2006) ("*Gila VI*"), and decided not to address the claims between the Tribe and the Community. *Id.* at 903 n. 25.

[2] The doctrine applies to matters decided by consent decree as well as to those resolved through actual litigation. *See Nevada*, at p. 118 (recognizing that the *Orr Ditch* Decree adopted the parties' settlement agreement); *see also*, 1B James W. Moore, et al., MOORE'S FEDERAL

(Continued on following page)

("Decree" or "*Globe Equity* Decree") entered in *United States v. Gila Valley Irrigation District, et al.*, Globe Equity 59 ("*Globe Equity*"). Accordingly, Phelps Dodge respectfully requests that this Court grant its Conditional Cross-Petition and issue a Writ of Certiorari to review the decision of the Arizona Supreme Court entered on February 9, 2006 in the event this Court grants the Petition by the Tribe.

OPINION BELOW

The Opinion and Order of the Arizona Supreme Court is reported in *In Re the General Adjudication of All Rights to Use Water in The Gila River System and Source*, 127 P.3d 882 (Ariz. 2006) ("*Gila VI*").[3]

JURISDICTION

The decision of the Arizona Supreme Court was filed on February 9, 2006. The decision of the Supreme Court denying the Tribe's Motion for Reconsideration was filed on May 3, 2006. The Tribe's Petition was docketed on August 3, 2006. This Conditional Cross-Petition is being filed within the timeframe set forth in Rule 12(5), Rules of the Supreme Court. This Court has jurisdiction under 28 U.S.C. § 1257(a).

PRACTICE ¶ 0.409[5] (2d ed. 1996) ("The [consent] judgment is not, like the settlement agreement out of which it arose, a mere contract inter parties. The court is not properly a recorder of contracts; it is an organ of government constituted to make judicial decisions, and when it has rendered a consent judgment it has made an adjudication.").

[3] The Opinion is attached as Appendix A to the Tribe's Petition.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

No constitutional or statutory provisions are involved.

STATEMENT OF THE CASE

I. PROCEEDINGS BELOW

In the Gila River Adjudication,[4] the Superior Court instituted Contested Case No. W1-203 regarding the preclusive effect of the *Globe Equity* Decree[5] upon the Community. The court referred contested case W1-203 to the Special Master. Motions for Summary Judgment were filed by various parties, and the Special Master issued his

[4] For a history of the Gila River Adjudication, see the following cases: *In Re the General Adjudication of All Rights to Use Water in The Gila River System and Source*, 35 P.3d 68 (Ariz. 2001) ("*Gila V*"); *In Re the General Adjudication of All Rights to Use Water in The Gila River System and Source*, 9 P.3d 1069 (Ariz. 2000) ("*Gila IV*"), *cert. denied*, 530 U.S. 1250 (2000); *In Re the General Adjudication of All Rights to Use Water in The Gila River System and Source*, 989 P.2d 739 (Ariz. 1999) ("*Gila III*"); *In Re the General Adjudication of All Rights to Use Water in The Gila River System and Source*, 857 P.2d 1236 (Ariz. 1993) ("*Gila II*"); *In Re the General Adjudication of All Rights to Use Water in The Gila River System and Source*, 830 P.2d 442 (Ariz. 1992) ("*Gila I*"); *see also Arizona v. San Carlos Apache Tribe of Arizona*, 463 U.S. 545 (1983); *United States v. Superior Court*, 697 P.2d 658 (Ariz. 1985).

[5] For a history of the *Globe Equity* litigation, see the following cases: *United States v. Gila Valley Irrigation Dist.*, 117 F.3d 425 (9th Cir. 1997); *United States v. Gila Valley Irrigation Dist.*, 31 F.3d 1428 (9th Cir. 1994); *United States v. Gila Valley Irrigation Dist.*, 961 F.2d 1432 (9th Cir. 1992); *United States v. Gila Valley Irrigation Dist.*, 959 F.2d 242 (9th Cir. 1992) (unpublished); *United States v. Gila Valley Irrigation Dist.*, 454 F.2d 219 (9th Cir. 1972); *Gila Valley Irrigation Dist. v. United States*, 118 F.2d 507 (9th Cir. 1941); *United States v. Gila Valley Irrigation Dist.*, 920 F.Supp. 1444 (D. Ariz. 1996); *United States v. Gila Valley Irrigation Dist.*, 804 F.Supp. 1 (D. Ariz. 1992).

report. The Superior Court, after objections and oral argument, ruled that the doctrine of claim preclusion barred the Community from claiming additional water from the mainstream of the Gila River, but not its tributaries.[6]

In addition to the W1-203 matter, the Superior Court instituted contested case W1-206 to determine the preclusive effect of prior court decisions and agreements upon various parties, including the Tribe and the United States on its behalf. Numerous motions for summary judgment were filed. After oral argument, the Superior Court ruled that the Tribe's claims to additional water from the Gila River were precluded to the extent consistent with the Court's findings and conclusions as set forth in the W1-203 March 7, 2002 Amended Order.[7]

The Tribe filed a Petition for Interlocutory Review to the Arizona Supreme Court, and Phelps Dodge filed a Conditional Cross-Petition for Interlocutory Review. After allowing review, the Arizona Supreme Court held that the *Globe Equity* Decree precluded the Tribe from seeking additional waters from the mainstream of the Gila River but not its tributaries. *Gila VI*, at 903, ¶ 83.

II. STATEMENT OF FACTS

A. THE SAN CARLOS RESERVATION AND SETTLEMENT ALONG THE GILA RIVER

The San Carlos Apache Reservation (the "Reservation") was established by Executive Order on December 14,

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[6] Appendix D to the Tribe's Petition, Order, *nunc pro tunc*, dated March 7, 2002 (the "Amended Order").

[7] Appendix C to the Tribe's Petition, Order dated May 17, 2002.

1872. At about this same time, upstream settlers in the Safford and Duncan-Virden Valleys and downstream settlers in the Florence-Casa Grande area began farming along the Gila River and diverting water from the river for irrigation. After these upstream diversions began, federal authorities and members of the Tribe complained that the Apache Indians were being deprived of water that was rightfully theirs.

B. THE SAN CARLOS IRRIGATION PROJECT

In 1916 and 1924 the United States Congress appropriated funds to build an irrigation project for the benefit of the Community and farmers in the Florence-Casa Grande area. The project, known as the San Carlos Irrigation Project ("SCIP"), included construction of the Ashurst-Hayden Diversion Dam and the Coolidge Dam.[8] The project included storing water in the San Carlos Reservoir and making that stored water available to the Community and farmers in the San Carlos Irrigation and Drainage District ("SCIDD"). One of the purposes of the United States in bringing the *Globe Equity* litigation was to settle these water rights as well as the Community's and the Tribe's water rights.

C. THE *GLOBE EQUITY* LITIGATION

On October 2, 1925, the United States, on behalf of itself, the Community, and the Tribe, filed a Bill of Complaint ("Complaint") in the United States District Court for the District of Arizona to adjudicate the rights to the

[8] The 1916 project was initially called the Florence-Casa Grande Project and included the construction of the Ashurst-Hayden Diversion Dam and related canals. The 1924 Act expanded the scope of the original project and merged it into SCIP.

waters of the Gila River.[9] The Complaint named as defendants the Gila Valley Irrigation District ("GVID"), the Franklin Irrigation District ("FID"), various canal companies, farmers, and diverters in the Safford and Duncan-Virden Valleys ("Upper Valley Defendants" or "UVDs"), and other diverters along the Gila River. Over 950 defendants were named in the litigation.

The Complaint alleged, among other things, that the United States had "reserved and appropriated . . . all of the waters of the said Gila River and its tributaries . . . which may be necessary for the economic and successful irrigation and cultivation" of reservation lands. The Complaint requested that the Court "determine the relative rights of the parties hereto . . . in to and of the waters of the said Gila River and its tributaries in Arizona and New Mexico."

Two years after filing the original complaint, the United States filed an Amended Complaint, again naming the UVDs and other diverters along the Gila River.[10] The Amended Complaint also named additional parties as defendants who diverted water only off the tributaries of the Gila, including Phelps Dodge.[11]

The United States limited the geographic scope of the *Globe Equity* litigation to the area between ten miles east of the Arizona line to the confluence of the Gila River with the Salt River.[12] The confluence is at the western edge of

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[9] Appendix 1, hereto, the Bill of Complaint.

[10] Appendix 2, hereto, Amended Complaint dated December 5, 1927.

[11] Appendix 2 at ¶ 5.

[12] Based upon the United States not seeking to adjudicate the water rights of the Salt River, the Tribe has always been able to make claim for reserved water rights to the Salt River and its tributaries,

(Continued on following page)

the Gila River Indian Reservation and after the other tributaries join the Gila River, therefore bringing the tributaries within the litigation's geographic scope:

> the Gila River as it flows between a line 10 miles east of and parallel to the dividing line between Arizona and New Mexico, and the confluence of the Salt River with the Gila River, and after the following tributaries of the Gila River: the San Francisco River, the San Carlos River, the San Pedro River, and the Santa Cruz River, respectively, have joined the mainstream.[13]

The United States also recognized that the Defendants "claimed some right to divert water from the Gila River . . . or the said Defendants claim some right to store the water of said river, *or of some tributary thereof*, either within or above the stretch of the same as just described."[14]

The United States pled a number of theories, including aboriginal rights based on possession and occupancy,[15] implied reserved water rights,[16] treaty

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including the Black River, which forms the northern border of the Reservation. In the Gila River Adjudication, the Tribe in fact has settled its claims to the Salt River, and the settlement was approved by Congress. San Carlos Settlement Act of 1992, P.L. 102-575, as amended. This settlement and legislation gives the Tribe 76,445 acre-feet of water per year, the ability to store water in the San Carlos Reservoir, money for capital projects, and rights to groundwater on the Reservation.

[13] Appendix 2 at ¶ 15.

[14] Appendix 2 at ¶ 15.

[15] Appendix 2 at ¶¶ 20, 21.

[16] Appendix 2 at ¶¶ 20, 21, 30, 31.

rights,[17] and prior appropriation rights.[18] The United States claimed these rights for the entire reservation.[19]

The United States treated the Tribe's rights to one tributary differently by expressly excluding the San Carlos River in two paragraphs of the Amended Complaint:

> These [Apache] Indians are entitled by their rights at occupancy and possession and on account of the reservation thus made to sufficient water for the irrigation of the lands deemed necessary for them to irrigate from the Gila River, *excluding the San Carlos River*, three thousand (3,000) acres of land. . . .[20]
>
> * * *
>
> The Indians of said San Carlos reservation irrigated with the waters of the Gila River, *exclusive of the waters of the San Carlos River*, through a number of ditches on their reservation . . .[21]

For relief, the United States requested in the Amended Complaint

> [t]hat the Court, by its decree, *determine the rights of the parties hereto to the waters of said river* ***and its tributaries*** and the right of said parties to divert water from said river with an area aforesaid and for storage above, to the end that it may be known how much of said waters may be diverted from said river by the parties

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[17] Appendix 2 at ¶ 18.

[18] Appendix 2 at ¶ 21.

[19] Appendix 2 at ¶¶ 11, 20, 30, and 31.

[20] Appendix 2 at ¶ 9(b).

[21] Appendix 2 at ¶ 10.

hereto and for what purposes, where, by means of diversion and with what priorities.[22]

D. DEFENDANTS DIVERTING ONLY FROM THE TRIBUTARIES WERE DISMISSED

On January 29, 1932, the United States entered into a stipulation with defendants Phelps Dodge and Arizona Copper Company that the Amended Complaint would be dismissed as to those two defendants. Thereafter, the Court entered an order dismissing Phelps Dodge and several other defendants from the *Globe Equity* litigation, without prejudice, because the interests of those defendants were "outside the territorial scope of this suit as it was and is defined in the Amended Complaint" and because the dismissed defendants were included in the action "through inadvertence and mistake." These dismissals make no mention of dismissing the claims of the United States on behalf of the Tribe to the tributaries.

E. THE PARTIES SETTLED THE *GLOBE EQUITY* LITIGATION

After the Amended Complaint was filed, the United States and the UVDs engaged in settlement negotiations. During the negotiations, the representatives of the United States agreed to settle the United States' claim on behalf of the Tribe, as asserted in the Amended Complaint, for 6,000 acre-feet of water per year to serve 1,000 acres on the Reservation. The government's rationale for these actions was stated as follows:

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[22] Appendix 2 at p. 33.

The Apache claim presented difficulties. There, neither the Indians, nor the Government for them, were irrigating from the river, and irrigation there from that source in all the past has not been great; the Indians did not have an irrigating history; and very important and discouraging to the Government side was the physical situation which precluded irrigation from the river at a reasonable cost and the fact that the Government not only was prosecuting no plans for such irrigation but had none.

The claim was made, as I recall it, for the total reasonably irrigable area, 3,000 acres needing 37½ second feet of water.

As will be seen, the Government had a weak case. If the court had had an opportunity to rule on it nothing might have been given, especially unless a reasonable plan for using some amount of water could have been suggested. Since none such had been adopted, apparently, either before or after the San Carlos Act, the case as a case was weak.

The determination of the settlement I think especially advantageous. The reservation is given enough water for 1000 acres with a priority second only to that of the Pimas. Also, since there is so little prospect of the right being usable due to the physical situation of the lands on the reservation and immediately above it and the requirement of law that changes of point of diversion, etc., can only be made to the extent that they do not injure others, a plan was devised and is embodied in the decree whereby the Upper Valleys may get rid of the menace of this right if the Indians wish to sell it.

> Under this plan the right would be held merely as a support to San Carlos Project and Upper Valley rights as against other claimants in the stream, but would not be used otherwise. [23]

Shortly thereafter, Attorney General Homer Cummings wrote a letter to Harold Ickes, the Secretary of the Interior, outlining the major issues arising in the negotiations over the Decree. In the letter, Cummings reiterated Truesdell's sentiments:

> Article VI also deals with the rights claimed by the Government on behalf of the Apache Indians of the San Carlos Reservation. The situation regarding these Indians is quite different from that occupied by the Pimas. Very little irrigation has been done by them. They have no irrigation history, but little of the land is susceptible of water service from the river, and no plans appear to have been made by the Government in regard to irrigation in their behalf. The amended bill of complaint calls for the irrigation of 3,000 acres with priorities subsequent to those of the Pimas. Any case which might be made by the Government for the Apaches would be a weak one, and it is not likely that if submitted to judicial determination, more than a negligible quantity would be allocated to them. Viewing these conditions in a practical way, it has been decided to fix the area for the allocation of water rights at 1,000 acres with a diversion right of 12½ cubic feet per second. This is considered advantageous in view of the other primary rights claimed by

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[23] Memorandum from John Truesdell, attorney for the United States, to the Commissioner of Indian Affairs and the Solicitor of the Interior Department (March 26, 1934) at 4.

> the Government in the suit. The provision also is made to inure to the benefit of the so-called upper valleys lands in this, that they are under certain conditions specified, allowed to acquire this right for a money consideration.[24]

The negotiations resulted in a settlement that was documented in a draft consent decree. The draft consent decree, which a federal attorney understood to "definitely determine [] the rights of all landowners on the river," was reviewed and approved by both the United States Attorney General and the Secretary of Interior.

F. THE DECREE

United States District Court Judge Sames entered the proposed consent decree, as signed by both the Secretary of Interior and the Attorney General, on June 29, 1935.[25] The preamble states

> *[t]hat the plaintiff and the parties defendant* whose claims and rights have been presented by answer or stipulation and *remain for determination herein, have concluded and settled all issues in this cause* as between plaintiff and said parties defendant, and as between said defendants and each of them and every other thereof, and mutually have agreed . . . that such settlement should be embodied in and confirmed and made effective

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[24] Letter from Cummings to Ickes, May 3, 1934 at 4; *see also* Memorandum from Iverson to Blair (May 24, 1934) at 15 ("Opinion has been expressed by a number of parties on the Government side of this case that in the event of submission upon the facts, the court would allow little, if any, water for Apache lands.").

[25] Supplemental Appendix at p. 103 to the Tribe's Petition, Final Decree, *Globe Equity*.

> by way of the within decree of the Court in this cause defining and adjudicating their claims and rights as against each other in identical form and substance as hereinafter set forth. . . .[26]

The schedule of priorities in Article V lists diversion rights on the Gila River. For the Tribe the schedule identifies the "Lands for which rights acquired" as the entire "San Carlos Indian Reservation."[27] Article VI of the Decree establishes the United States' rights on behalf of the Tribe as follows:

> (2) The right, on behalf of the Apache and other Indians of the San Carlos Indian Reservation, their descendants, successors and assigns, to divert 6,000 acre feet of the waters of the Gila River, during each irrigation season, from the natural flow in said river at diversion points on said river within said reservation – or above the eastern boundary thereof under such rights of way as may now exist or be acquired therefor; due measures being taken to avoid injuries to other water users by said last mentioned diversions, – as of a date of priority of the year 1846 and to the extent that such waters are available under said priority – at a rate of diversion not exceeding 12.5 cubic feet per second at any time during such season, for the reclamation and irrigation of *1000 acres of the irrigable lands within the said reservation* (or in part or wholly within

[26] Supplemental Appendix at p. 118 to the Tribe's Petition.

[27] Supplemental Appendix at p. 126 to the Tribe's Petition.

> the valley of the Gila River above the eastern boundary of said Reservation, if lands are there acquired by the United States for that purpose), situated in the County of Graham, State of Arizona, and more particularly described as within said reservation and that portion of the valley of the Gila River above the San Carlos Reservoir and flow line thereof; . . . [28]

Article XIII of the Decree states in part

> *[t]hat each and all of the parties* to whom rights to water are decreed in this cause (and the persons, estates, interests and ownerships represented by such thereof as are sued in a representative capacity herein), their assigns and successors in interest, servants, agents, attorneys and all persons claiming by, through, or under them and their successors, *are hereby forever enjoined and restrained from asserting or claiming* – as against any of the parties herein, their assigns or successors, or their rights as decreed herein – *any right, title or interest in or to the waters of the Gila River,* ***or any thereof***, except the rights specified, determined and allowed by this decree, *and each and all thereof are hereby perpetually restrained and enjoined from diverting, taking or interfering in any way with the waters of the Gila River* or ***any part thereof***, so as in any manner to prevent or interfere with the diversion, use or enjoyment of said waters by the owners of prior or superior rights therein as defined and established by this Decree; . . . that

[28] Supplemental Appendix at p. 198 to the Tribe's Petition.

the Court retains jurisdiction hereof for the limited purposes above described, this decree otherwise being deemed a final determination of the issues in this cause and of the rights herein defined.[29]

G. THE TRIBE AND UNITED STATES HAVE CLAIMED SIGNIFICANTLY MORE WATER IN THE GILA ADJUDICATION THAN AWARDED UNDER THE DECREE

In the Gila Adjudication, the Tribe has asserted claims for a total of 775,292 acre-feet per year from the Upper Gila River Watershed for the Reservation.[30] In the Gila Adjudication, the United States, on behalf of the Tribe, has asserted claims to a total of 174,526 acre-feet per year from the Gila River for that portion of the Reservation within the Gila River watershed.[31]

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[29] Supplemental Appendix at p. 225 to the Tribe's Petition.

[30] Supplemental Appendix at p. 42 to the Tribe's Petition. Statement of Claimant of the Tribe, No. 39-63614, filed November 1, 1985 and Addendum to Tribe Statement of Claimant; While this Statement of Claimant and Addendum is for "the Upper Gila River Watershed," it appears to include some claims to the Salt River because the Tribe's Statement of Claimant for the Salt River includes the same Addendum. *See* Statement of Claimant No. 39-12676, filed September 16, 1985. Consequently, it is difficult to identify specifically how much water the Tribe claims from the Gila River alone. For purposes of this matter, however, it is sufficient to state that the Tribe has asserted claims in the Adjudication that exceed its entitlement under the *Globe Equity* Decree.

[31] Supplemental Appendix at p. 82 to the Tribe's Petition, Statement of Claimant of the United States No. 39-64259, filed November 1, 1985, and Water Rights Claim of the United States as Trustee for the San Carlos Apache Tribe, attached to the Statement of Claimant ("Attachment").

REASONS FOR GRANTING THE CONDITIONAL CROSS-PETITION

I. THE ARIZONA SUPREME COURT MIS-APPLIED THE FEDERAL LAW OF CLAIM PRECLUSION

The Arizona Supreme Court misapplied the federal law of claim preclusion:

> We deal today with the issue of claim preclusion, formerly referred to as *res judicata*. 'Simply put, the doctrine of *res judicata* provides that when a final judgment has been entered on the merits of a case, it is a finality to the claim or demand in controversy, concluding parties and those in privity with them . . . as to every matter which was offered and received to sustain or defeat the claim or demand . . . '

Gila VI, 127 P.2d at 887, ¶ 14 (quoting *Nevada*, 463 U.S. at 129-30 (quoting *Cromwell*, 84 U.S. at 352)). The Arizona Supreme Court selectively quoted from this Court's rule of claim preclusion:

> Simply put, the doctrine of *res judicata* provides that when a final judgment has been entered on the merits of a case, '[i]t is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, ***not only*** as to every matter which was offered and received to sustain or defeat the claim or demand, ***but as to any other admissible matter which might have been offered for that purpose***.

Nevada, at 129-130 (quoting *Cromwell*, 94 U.S. at 352) (emphasis added). As this Court also explained in *Arizona II*, claim preclusion bars "'parties from contesting matters that they had a full and fair opportunity to litigate'" in a

previous action. *Arizona II*, 460 U.S. at 619 (quoting *Montana v. United States*, 440 U.S. 147, 153-54 (1979)). The Arizona Supreme Court expressly failed to apply this Court's test of claim preclusion because it found the rule only applies to matters actually offered and received to sustain and defeat the claim.

This Court has on two occasions held that the failure of the United States to seek all water rights to which an Indian tribe may be entitled in a prior proceeding nevertheless bars the tribe and the United States on its behalf from obtaining those rights in a subsequent litigation. *Nevada*, 463 U.S. at 145; *Arizona II*, 460 U.S. at 621-26. In *Nevada*, this Court found that the United States, on behalf of the Lake Pyramid Paiute Tribe, "was given an opportunity to litigate the Reservation's entire water right." *Id.* at 131. The Court looked at the amended complaint and the consent decree entered in the prior proceeding to determine that the cause of action alleged was nothing "less than a claim for the full implied-reservation-of-water rights that were due the Pyramid Lake Indian Reservation." *Id.* at 133. Thus, even though the United States failed to seek and acquire reserved rights to Pyramid Lake for the Tribe's fishery, claim preclusion barred the Tribe's attempts to gain these rights in later litigation because the United States could have obtained those rights in the prior proceedings.

Similarly, in *Arizona II*, this Court held that the various tribes could not obtain additional water rights from the Colorado River when the United States "omitted" certain reservation lands in an earlier proceeding. Again, the Court precluded these claims for additional water rights for the "omitted" lands because the United States

had the opportunity to obtain those reservations' reserved water rights in the earlier proceeding.[32] *Id.* at 620. . .

In this case, the United States had the opportunity to obtain the Tribe's rights to the tributaries in the *Globe Equity* litigation. Just as the Tribe in *Nevada* was barred from seeking fishery rights to Pyramid Lake and just as the tribes in *Arizona II* were barred from seeking additional irrigation rights for the omitted lands, the Tribe here should be barred from seeking additional rights to the tributaries of the Gila River.

II. AS A GENERAL MATTER THE UNITED STATES COULD NOT SPLIT THE TRIBE'S CLAIMS TO THE TRIBUTARIES

The doctrine of claim preclusion prohibits the splitting of claims except in very limited circumstances.[33] In other words, claim preclusion bars relitigation of all claims that were *or could have been* asserted in the prior action. *Nevada*, at 129-30.

In *Nevada*, the District Court "held that neither the United States nor the Tribe can litigate several different

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[32] The importance of finality of judgment in the water rights context is exemplified by *Arizona II*, because the technical rules of claim preclusion did not apply. This was because the earlier proceeding was in the same original action before this Court. Nevertheless, this Court applied the doctrine of claim preclusion because of the utmost importance that finality of judgments have in water rights litigation in the arid Western United States. *Arizona II*, at 619-20.

[33] The next section addresses that the only potentially applicable exception, allowing parties to preserve certain claims for future litigation by making an express and clear reservation in the consent decree, does not apply here, as the *Globe Equity* parties made no express reservation in the Decree of any claims to the tributaries.

types of water use claims, all arising under the *Winters* doctrine and all designed for the same water source in a piecemeal fashion." 463 U.S. at p. 134 n. 13. As a result, the District Court found that the United States could not split the Tribe's claim to the fishery from the Tribe's claim to the Truckee River. The Ninth Circuit, however, observed the that the United States could have sought to adjudicate the Tribe's irrigation rights separate from the Tribe's fishery rights but it did not in fact split the claim. *Id.* This Court did not resolve whether the claim could have been split because the United States made no attempt to split the claim. *Id.*

This Court has, however, previously ruled that a party may not split its claims and litigate in a piecemeal fashion:

> it was incumbent on the appellant to present in support of his asserted right of attack every available ground of which he had knowledge. He was not at liberty to prosecute that right by piecemeal, as by presenting a part only of the available grounds and reserving others for another suit, if failing in that.

Grubb v. Public Utilities Commission of Ohio, 281 U.S. 470, 478 (1930); *see also Sidney v. Zah*, 718 F.2d 1453, 1458-59 (9th Cir. 1983) (Hopi Tribe barred from seeking removal of a Navajo structure Hopis failed to contest in a prior proceeding by general rule prohibiting the splitting of a cause of action); *Scoggin v. Schrunk*, 522 F.2d 436, 437 (9th Cir. 1975) ("Appellant is not permitted to fragment a single cause of action and to litigate piecemeal the issues which could have been resolved in one action."), *cert. denied*, 423 U.S. 1066 (1976).

In this case, the waters of the tributaries are a part of the waters of the mainstream of the Gila River when they

join the Gila River. As part of its rights under the Decree, the Tribe is entitled to divert and use water that comes from the tributaries. To allow the Tribe to split its claims to the same source of water is to allow piecemeal litigation, and is the antithesis to the concept of finality of judgments – the foundation of the doctrine of claim preclusion.

III. THE ARIZONA SUPREME COURT MISAPPLIED FEDERAL LAW WHEN IT HELD THAT THE UNITED STATES SPLIT THE CLAIMS TO THE TRIBUTARIES

The Arizona Supreme Court's holding that the United States split the claims to the Tributaries misapplied federal law. While there appears to be no case in which this Court has decided what parties are required to do to effectively split a claim by agreement, the various Circuit Courts that have addressed the issue have consistently held that such an agreement to split claims must be set forth in the consent decree and must also be express and clear:

> [C]onsent decrees are of a contractual nature and, as such, their terms may alter the preclusive effects of a judgment. Here however, the Stipulation and the consent judgment are absolutely silent as to the settlement's intended *res judicata* effects. As we noted above, appellant's original complaint sought to establish boundaries for the first suit and to reserve certain of its rights under the Agreement for subsequent litigation. However, those reservations were not carried forward into the contractual settlement with appellee. We are not willing to supply by inference what the parties have failed to expressly

> provide, especially when that inference would suspend the application of this Circuit's principles of *res judicata*.

May v. Parker-Abbott Transfer and Storage, Inc., 899 F.2d 1007, 1010-11 (10th Cir. 1990) (citations omitted) (emphasis added); *see also California v. Randtron*, 284 F.3d 969 (9th Cir. 2002); *International Union of Operating Eng'rs-Employers Constr. Indus. Pension, Welfare and Training Trust Funds v. Karr*, 994 F.2d 1426, 1432-33 (9th Cir. 1993); *United States v. Skokomish Indian Tribe*, 764 F.2d 670, 672-73 (9th Cir. 1985).

The *Randtron* case is particularly instructive because the court faced a situation where one party's claim was expressly split and the other party's was not. *Randtron*, 284 F.3d at 976. Thus, the Court found that one party's claim in a subsequent proceeding was not barred, while the other party's claim was barred. The plaintiff, City of Lodi, asserted that its current claims were split from those adjudged in a prior consent decree. *Id.* at 975. The Ninth Circuit agreed, relying upon express language in the consent decree.[34] *Id.* at 976. The consent decree's release as to Randtron was expressly limited to claims involving only

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[34] The Agreement provided as follows:

> Matters Not Covered by Disclosed Insurance. Any claims or rights (including those asserted in this action) that the Plaintiffs, or either of them, may have now, or may in the future acquire, against Randtron or Oldco Holz to the extent Randtron or Oldco Holz are protected from the liability asserted in those claims by any insurance not exhausted by this Consent Decree (i.e., insurance other than the limits of liability coverage provided by the general liability provisions of the combined single limits endorsements of policy numbers 0624-03-033933 and 0626-00-037304 issued by Employers Insurance of Wausau A Mutual Company).

Id.

certain insurance policies, and the City of Lodi therefore expressly preserved its right to litigate additional claims against Randtron relating to different insurance policies. *Id.*

On the other hand, Randtron failed to secure a similar express reservation with respect to any of its claims. Randtron, therefore, was precluded from asserting its claim for contribution. *Id.* ("Notably, this provision contains no language granting Randtron the same right. Under the terms of the Consent Decree, Randtron was not entitled to seek contribution from Lodi.").

The *Randtron* decision is representative of the law administered by the other Circuits. Where a party expressly reserves its right in the consent decree to litigate a claim in the future, that claim is not precluded in the future by *res judicata*. *See, e.g., Simmons v. New Public School Dist. No. Eight*, 251 F.3d 1210, 1214 (8th Cir. 2001) ("While normally Simmons' EEOC complaint would be barred by the settlement in her first lawsuit, it is clear that the *explicit reservation* of her right to bring her EEOC claims allows this suit.") (emphasis added); *Young-Henderson v. Spartanburg Area Mental Health Center*, 945 F.2d 770, 774 (4th Cir. 1991) (allowing subsequent claims to proceed only because the parties agreed pursuant to the express terms of the consent order "that it would 'only terminate[] the claims raised in the complaint [and that the Consent Order would] not in any way affect any other charges or claims filed by the Plaintiff subsequent to the commencement of this . . . action.'") (changes in the original).

On the other hand, where there is no express reservation of a claim that was or could have been asserted in the prior action, claim preclusion bars the party from raising

the claim in a subsequent action. *See, e.g., Epic Metals Corp. v. H.H. Robertson Co.*, 870 F.2d 1574, 1577 (Fed. Cir. 1989), *cert. denied*, 493 U.S. 855 (1989) (recognizing that "[w]ith respect to a consent judgment," any claim "that is not expressly reserved is barred in future litigation."); *Hadix v. Johnson*, 947 F.Supp. 1100, 1103 (E.D. Mich. 1996), *rev'd on other grounds*, 133 F.3d 940, 943 (6th Cir. 1998) ("[A consent] judgment has the same res judicata effect as a judgment after trial unless there is a reservation of issues discerned from the four corners of the decree.").

Had the United States intended to preserve the Tribe's claims to the tributaries for future action, and avoid the full impact of claim preclusion, it could have done so. Indeed, the United States knew exactly how to split claims because it did so to the Tribe's claims to the Salt River, by clearly limiting the geographic scope of the *Globe Equity* litigation to that portion of the Gila River from ten miles east of the Arizona line to the confluence with the Salt River. In addition, on two occasions in the Amended Complaint, the United States, in describing the rights it was seeking on behalf of the Tribe, clearly and expressly excluded the San Carlos River. If, as the Arizona Supreme Court held, the Amended Complaint did not include any tributaries in the first instance, then the United States had no reason to exclude the San Carlos River in paragraphs 9(b) and 10 of the Amended Complaint. The Amended Complaint fails to include a clear and express statement that the United States was splitting the Tribe's claims to the tributaries.

Instead of splitting the claims to the tributaries, the United States expressly asked the *Globe Equity* court to "determine the rights of the parties hereto to the waters of [*the Gila*] *River and its tributaries*." The Arizona Supreme

Court rationalizes its holding by relying on a phrase later in the paragraph that states "within the area aforesaid." The Arizona Supreme Court held that this means after the tributaries had joined the mainstream of the Gila River. *Gila VI* at 892. On the contrary, the "area aforesaid" clearly referred to the geographic scope of the Gila River to which the United States was seeking to adjudicate water rights: the Gila River from ten miles east of the Arizona line to its confluence with the Salt River. Having made claims to the tributaries in the Amended Complaint, claim preclusion bars relitigation of claims for additional water from the tributaries unless the *Globe Equity* Decree expressly reserved these claims. The Decree includes no express reservation.

On the contrary, several provisions of the Decree make it clear that the tributaries were included. For example, Article XI states "[t]hat the lands within the Gila River watershed for the irrigation of which rights are decreed . . . " By referring to the "*Gila River watershed*," the parties recognized that more than just rights to the mainstream of the Gila River were being settled; these rights included the water from tributaries flowing into the Gila River.[35]

This is further confirmed in Article VIII. A portion of this Article limited the UVDs from consumptively using more than 120,000 acre-feet per year from the Gila River. In setting forth how to calculate consumptive use, the parties expressly added the flows from a tributary:

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[35] This is likewise true in the Gila River Adjudication which defines the cause number W-3 is for the Upper Gila River watershed which includes its tributaries.

> Provided further that the drafts on the stream by the upper valleys defendants shall be limited to a seasonal year diversion which will result in an actual consumptive use from the stream of not to exceed 120,000 acre feet of water; said consumptive use made in any seasonal year shall be determined by adding the recorded flows at a gauging station located in the Gila River at the Red Rock Box Canyon above the heading of the Sunset Canal in New Mexico *and a gauging station located in the San Francisco River immediately above its confluence with the Gila River* and deducting from said sum the recorded flows at a gauging station located on the Southern Pacific Railway bridge crossing the Gila River near Calva, Arizona . . . .

Thus, the parties recognized that the waters of the tributaries flow into the mainstream of the Gila River and contribute part of the water to which they had acquired rights under the Decree. This is true not only for the San Francisco River, but all tributaries to the Gila River. Therefore, the water from each tributary flowing into the Gila River is a part of the water required to satisfy the rights awarded in the Decree. This tributary water is included in the Decreed right.

The last point relied upon by the Arizona Supreme Court was that the dismissal of the defendants claiming rights only on the tributaries shows an intent to split the claims of Tribe. This holding ignores the fact that the United States did not expressly dismiss the Tribe's or any other remaining party's claims to the tributaries. Dismissing certain defendants does not change the impact of claims on the remaining parties to the litigation. *See Randtron*, 284 F.3d 969 (consent decree expressly reversing one party's

claims for the future did not reserve the other party's claims for future litigation – reservation or splitting of claims for each party had to be express). All the dismissal did is preserve the Tribe's and the United States', as well as the other parties', rights to dispute and adjudicate the claims of the dismissed parties, including Phelps Dodge's claims, in the future. Indeed, these water rights claims are now being adjudicated in the Gila River Adjudication. For parties remaining in the litigation, however, the claims to the tributaries were raised by the record, remained at issue, and were conclusively settled in the Decree. Indeed, the Decree expressly states this in the preamble: "that the [p]laintiff and the parties defendants whose claims and rights . . . remain for determination herein, have concluded and settled all issues in this cause. . . ." Likewise, the injunction, Article XIII, enjoins the parties from "asserting or claiming . . . any right, title or interest in or to the waters of the Gila River, or any thereof, except" as provided in the Decree, and restrains and enjoins the parties from "diverting, taking or interfering in any way with the waters of the Gila River or any part thereof . . . ."

The Arizona Supreme Court's holding that the tributaries were split, is contrary to federal law and robs the Decree of finality. Under this holding, much of the rights and protections awarded to the parties under the Decree become illusory. For example, by allowing the Tribe to seek significant reserved water rights to the San Francisco River will emasculate the 120,000 acre-foot limitation in the Decree. If the Tribe succeeds in gaining significant rights to the San Francisco River, it could divert upstream from the point of measurement set out in the Decree thereby depriving the UVDs of the water they would otherwise use to calculate the consumptive use limit.

Similarly, SCIP's 1924 right to store water in the San Carlos Reservoir would only apply to the mainstream of the Gila, not the tributaries. In other words, under the Arizona Supreme Court's holding, SCIP was awarded no interest in the waters of the tributaries of the Gila River. This would upset the balance struck in the Decree not only for SCIP, but for the UVDs as well who were given apportionment rights in the Decree.[36]

The fact the Amended Complaint included express references to the tributaries, coupled with the Decree's recognition that it finally considered and settled all issues, that the decreed rights were for the "Gila River watershed," and that waters from the San Francisco River would be included in determining the consumptive use limit, establishes that the Tribe's rights to waters from the tributaries were included in the Decree. This is not the type of express reservation of claims required to split claims under federal law. Accordingly, the Tribe's right to water from the tributaries was included in the Decree, and the Tribe and the United States are precluded from seeking additional water from the tributaries in the Gila River Adjudication.

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[36] Apportionment rights are described in Article VIII of the Decree. In brief, apportionment allows the UVDs to divert water in disregard of the United States' prior rights based on the amount of stored water in the San Carlos Reservoir.

CONCLUSION

Over 70 years ago, the United States District Court for the District of Arizona entered the *Globe Equity* Decree that adjudicated to the United States on behalf of the Tribe 6,000 acre-feet per year of Gila River water, with an 1846 priority date, for use on the Reservation. The *Globe Equity* Decree resolved all claims of the United States, as trustee for the Tribe, to water from the "Gila River and its tributaries" and enjoined the parties to the Decree from asserting rights to the Gila River beyond those specified in the Decree. During the intervening years, all appropriators of water from the Gila River system have relied on the finality of the *Globe Equity* Decree. In fact, much of Central and Eastern Arizona has developed in reliance on the rights set forth in the Decree.

Now over 70 years later, notwithstanding the fact the Amended Complaint sought to adjudicate the rights of the Tribe to the Gila "River and its tributaries," and the clear prohibition in the Decree precluding parties to it from seeking additional rights to the water of the "Gila River, or any thereof," the Arizona Supreme Court has allowed the Tribe and United States on its behalf, to assert sizeable additional claims to the tributaries of the Gila River in the Gila Adjudication. Allowing these claims in the Gila Adjudication defeats the principle of finality of judicial determinations, disrupts the economy of much of Arizona, deprives those who have relied upon the Decree of their investment-backed expectations and vested rights, and conflicts with this Court's decisions in *Nevada* and *Arizona II*.

As set forth by this Court in *Nevada* and *Arizona II*, the doctrine of *res judicata* precludes the Tribe and the United States on its behalf from obtaining any additional

rights to water from the tributaries of the Gila River beyond those provided in the *Globe Equity* Decree. Accordingly, the decision of the Arizona Supreme Court should be reversed so as to preclude the Tribe and the United States from seeking additional water from the tributaries.

Respectfully submitted,

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APPENDIX

APPENDIX 1

IN THE DISTRICT COURT OF THE UNITED STATES
IN AND FOR THE DISTRICT OF ARIZONA

Globe – Equity No. 59

THE UNITED STATES OF AMERICA,

Plaintiff,

-v-

Gila Valley Irrigation District; Arizona Copper Company; Arizona Hercules Copper Company; Aztec Mutual Canal Company; A.T. Lee & Company; Billingsley Canal Company; Billingsley Extension Canal Company; Black & McCluskey Canal Company; Boquillas Land & Cattle Company; Brown Canal Company; Burtcher Ditch Company; Central Canal Company; Colmenero Canal Company; Colvin-Jones Canal Company; Colvin-Jones Consolidated Ditch Company; Consolidated Canal Company; Cosper Wilson Canal Company; Cosper-Windham Canal Company; Cosper and Windham Extension Canal Company; Curtis Canal Company; Curtisville Irrigation & Canal Company; Dodge Canal Company; Double Circle Cattle Company; [Illegible] Canal Company; Enterprise Canal Company; First National Bank of El Paso, Texas; Florence-Casa Grande Water Users Association; Fourness Canal Company; Fournirs Canal Company; Franklin Canal Company; Frisco Placer Mining Company; Ft. Thomas Land & Cattle Company; Todd Bullion Mining Company; Gonzales & Company Irrigating Canal; Graham Canal Company; Hankins & Sims Milling & Irrigating Company; Hughes Irrigating Company; Jones-Colvin Canal Company; Liberty Water Company; London Gila Mining Company; Maxey Ditch Company; Military Canal

Company; Moddle Canal Company; [Illegible] Company; Montazuma Consolidated Canal Company; [Illegible]; Nichols & Company; Ray Consolidated [Illegible] Ditch Company; San Jose Canal Company; San Pedro Water Users Association; Sexton Ditch Company; Shriver Ditch Company; Smithville Canal Company; Smithville Extension Canal Company; Sunset Canal Company; Sunset Irrigating Canal Company; Tidwall Canal Company; Union Canal Company; Valley Canal Company; Warel & Courtney Dam Company; White Mountain Lumber Company; York Canal Company, York Cattle Company; respectively corporations; John Doe-Abbott; Chas Adams; Kate L. Adams; W.M. Adams; J.L. Aker; E. Alberts; John Doe Alquire; Millford Alrud; P.C. Alsdorf; John Doe Alvidrus; Joseph J. Anderson; R.H. Angle; John Doe Aury; John Doe Bacy; Henry G. Ballou; Wilson H. Bates; J.R. Beaver; J.R. Beavers; Paul Becker; A.H. Bennett; J.W. Bentz; Florentino Billabe; B.F. Billingsley; C.O. Billingsley; John J. Birdno; John J. Birelno; B.A. Boyles; Brugh H. Boyles; Newton Bradley; Jackson Branaman; Robert Branaman; J.B. Brooks; C.M. Brooks; R.W. Brooks; J.H. Brown; Sam Brown; S.A. Brown; E.P. Bryce; Josephine Burks; J.C. Burlison; Juan Cachon; John Doe Cacias; S.S. Campball; Rachel Carr; John Doe Carriger; J.A. Carter; John Castro; W.L. Cauthen; Chono Celaya; F.A. Chamberlain; John Christy; Simon Cisneros; John Doe Clifton; G.H. Collinwood; John Doe Colton; John Doe Courtney; J.F. Crank; Ben M. Crawford; M.C. Crawford; John Doe Cullen; Armon Curtis; D.G. Davidson; W.J. Davis; John Doe Day; Jesus de Si; Thos Desmond; John Doe Dinsmore; Frank C. Dolley; J.H. Dorsey; S.R. Dunnagan; W.B. Eckles; J. Elden; Joseph C. Ellidge, W.R. Elliot; W.F. English; J. Espinosa; W.R. Estrada; John Evans; George Finch; Arthur A. Fisher; W.F. Foster; Alma Fudickson; Anna M.

Gale; C.E. Gillett; J.M. Gilleland; Louis Gilson; Emil Gerard; J.H.B. Glasspie; Jose Gonzales; H.S. Grady; W.C. Green; John Doe Griswold, F.C. Grossback, Chas J. Gross, John Doe Grunler; John Hagen; L.W. Halladay; Henry B. Harris; M.F. Harris; Wade Harris; F.A. Harvey; J.D. Hartzler; G. Len Hatch; C.C. Hayes; G.E. Head; J.L. Henderson, A.S. Henry; James Henshall; G.L. Herring, C.C. Hester, Francelle Haywood, Erma T. Higgins; Jacob Hildebaugh; R.W. Hill; J.I. Hinkle; J.P. Hinkle, T. Hinton, Albert Hock; John Doe Holliday; F.G. Hopkins; R.T. Horrell, C.F. Houhflan; Free Hubbard; N. Hughes; Lettie F. Hunt; John Doe Hyde; A. Ingalls; William Jackson; Anna Jacobson; Jesse W. Jacobson; J.F. James; Julius W. Jamieson; J.W. Jamison; Jensen Brothers; Rachel Jenson; A.F. Johns; R.T. Johns; D. Johnson; F. Vernon Jones; F.W. Jones; John B. Jones; L.A. Jones; Mary Jane Jones; Perley P. Jones; Willard L. Jones; William L. Kaneaster; A.E. Kealer; William L. Keppler; W.R. Ketchum; George F. Kilmet; H.D. Kipper; J.G. Kipper; [Illegible] Doe Lacey; John Laffey, A.A. Larona; [Illegible] Lassater; A. Lattin; [Illegible] Law; A.L. Layton; Mrs. A.L. Layton; A.T. Layton; M.M. Layton; John Doe Lehoxi; W.A. Leonard; John Doe Lightfoot; Henry Lines; W.S. Logan; Christ Loss; Theodore Lujan; Anna H. Lunt; B. Lunt; Ed Lunt; George Lunt; Eaton Lunt; Owen Lunt; Randall Lunt; R.H. Lunt; Vernon Lunt; I.J. McCormick; J.W. McCormick; R.C. McClaron; D.T. McGuire; Robert McIntyre; Hugh McKeen; Gordon McLean; R.B. Maley; John Mansfield; T.J. Markham; J.A. Martin; Peter Martin; R.H. Martin; John Doe Mason; John Doe Mathers; Katherine S. Mellon; W.H. Mellor; John Doe Menos; Chas Merrill; Fannie Merrill; Fanley P. Merrill; Orson Merrill; P.M. Michelena; Manrico Mijia; M. Miller; William Milligan; J.B. Minton; James A.

Mitchell, Z.C. Montgomery; Robert Montgomery; S.S. Moore; John Doe Moorman; John Doe Mormin; John Doe Morrill; Alfred Mortenson; Arvin Mortensen; Hans Mortensen; Hiram Mortensen; Joseph Mortensen; Peter Mortensen; V. Nard; John Nash; John Doe Newton; John Doe Nicholas; John Nisson; Alice E. Nixon; Budd Nunn; D.S. O'Brien; Geo P. Olmstead; Geo A. Olney; Jose Ortega; Nancy O. Pace; Lee Patrick; A.D. Payne; E. Payne; George O. Payne; H.N. Payne; Junius Payne; L. Payne; Leila N. Payne; [Illegible] Peria; Z.C. Pina; Jas A. Pirkens; J.A. Pitt; Tomas Ponce; C.G. Powell; S.W. Price; N.Y. Prier; Dell M. Potter; C. Purttle; John Doe Putman; C.D. Putnam; Chas Putnam; Frederick M. Putnam; J.A. Reavis; James Adison; Ashley Reavis; James Addison; Piralto Reavis; John Reid; Chas T. Reynolds; John Doe Rich; L.H. Richards; C.E. Richardson; Ralph Richardson; J.H. Roach; H.P. Rogers; J.K. Rogers; J.R. Rogers; J.E. Rollins; A.H. Rose; Bert Z. Rose; S.F. Rose; John Doe Roseberry, John Doe Roskune; F. E. Ross; Victorino Ruiz; Frederica Saiviz; Jose Sanchez; Lillian Sander; Luis Santos; John Doe Schetler; C.F. Schilling; H.T. Schmidt; S. Schultz; George Scott; Manuel Serano; R. Sexton; Ernest G. Shade; C.W. Shannon; R.P. Sharp; C.M. Short; Louisa Short; John Shrivers; George Sigler; Henry L. Smith; A.R. Snyder; John Doe Solomon; Luinelas Somehez; Wm. Sparks, Wm. H. Stapley; Albert Steinfield; S. Stewart; T.L. Stockton Norberto Subia; John Doe Summers; H.B. Sweeting; L.F. Sweeting; A.E. Swofford; O.F. Swofford; William Telfar; Candido Telles; Cinaco Telles; F.A Thackerey; George Thompson; J.M. Thompson; Manuel Tibbets; P. Tibbets; John Doe Turney; W.N. Tweed; Jose Uribe; Elijah Urtiaga; John Doe Vaca; Charles H. Vann; John H. Van Order; Louis Voelckel; Peter Wahlin; J.E. Walker; Edgar Wallace; S.H. Ward; I.F. Wardner; J.F. Wardner; C.A. Warner;

Albert Warren; J.P. Welles; George W. Wells, Lorenzo Werch; William Whelin; Peter Whelin; D.Y. Whipple; Harry C. White; Wm. R. Whitehead; Andrew Williams; Geo. W. Williams; John Doe Wilkins; T.M. Williamson; Maurice Wills; A.T. Wilson; J.B. Windham; Frederick Winkleman; Pete Winkleman; L.H. Woolsey; M.B. Woolsey; John Doe York; R.J. Young; Richard Roe, administrator of the estate of Geo Casper; Richard Roe Second Administrator of the estate of Mrs. J.M. Marsh; Richard Roe Third administrator of the Estate of Cosper Gale

Defendants,

BILL OF COMPLAINT

(Filed Dec. 5 1927)

Comes now the United States of America and files this its Bill of Complaint against the above named defendants, answers under oath being hereby expressly waived and for its cause of actions states:

1. That this suit is prosecuted at the request of the Secretary of the Interior and by direction of the Attorney General of the United States.

2. That the defendant Gila Valley Irrigation District is an irrigation district organized and existing under the laws of Arizona, having its principal place of business in Graham County in the District of Arizona; that certain others of the above named defendants to-wit: Arizona Copper Company, Brown Canal Company, Central Canal Company, Colvin-Jones Canal Company, Colvin-Jones Consolidated Ditch Company, Consolidated Canal Company, Curtis Canal Company, Curtisville Irrigation & Canal Company, Dodge Canal Company, Double Circle

Cattle Company, Enterprise Canal Company, Fourness Canal Company, Fournire Canal Company, Ft. Thomas Land & Cattle Company, Graham Canal Company, Hawkins & Sims Milling & Irrigating Company, Jones-Colvin Canal Company, Maxey Ditch Company, Military Canal Company; Montezuma Consolidated Canal Company, Sanchez Ditch Company, San Jose Canal Company, Smithville Canal Company, Smithville Extension Canal Company, Tidwell Canal Company, Union Canal Company, Warel & Courtney Dam Company are corporations doing business in Graham County in the District of Arizona; that certain others of said defendants to-wit: Billingsley Canal Company, Billingsley Extension Canal Company, Black & McCluskey Canal Company, Burtcher Ditch Company, Colmenero Canal Company, Cosper Wilson Canal Company, Cosper-Windham Canal Company, Cosper & Windham Extension Canal Company, Duncan Canal Company, Frisco Placer Mining Company, Gold Bullion Mining Company, Liberty Water Company, Moddle Canal Company, Model Canal Company, Moranci Water Company, Sexton Ditch Company, Shriver Ditch Company, Sunset Canal Company, Sunset Irrigating Canal Company, Valley Canal Company, White Mountain Lumber Company, York Canal Company and York Cattle Company, are Corporations doing business in Greenley County in said District of Arizona; that defendant First National Bank of El Paso Texas, is a corporation organized and existing under the laws of the United States, having its principal place of business at El Paso, Texas; that certain others of said defendants to-wit: Arizona Hercules Copper Company, Aztec Mutual Canal Company, A.T. Lee & Company, Boquillas Land & Cattle Company, Florence-Casa Grande Water Users Association, Grozalos & Company

Irrigating Canal, London Gil[illegible] Mining Company, Ray Consolidated Copper Company, San Pedro Water Users Association are corporations and associations authorized under the laws of Arizona to do business in the District of Arizona having their principal places of business in the District of Arizona [Illegible] certain others of said defendants, to-wit: Nichols & Company, Franklin Canal Company, Hughes Irrigating Canal, Cosper Windham Canal Company, Sunset Canal Company and Valley Canal Company are corporations doing business in the District of New Mexico, County of Hidalgo that certain others of said defendants, to-wit: [Illegible], R.W. Hill, W.L. Cauthen, J.B. Windham, S.R. Dunnagan, J.D. Hartzler, J.A. Martin, Candido Telles, N. Hughes, S. Stewart, Joseph C. Elledge, William L. Kaneaster, are residents of Hidalgo County in the District of New Mexico; that saving and excepting those above named, all and every of the defendants herein, as plaintiff is informed and believes and therefore alleges are citizens and residents of the State and District of Arizona;

3. (a) That the plaintiff is the owner of certain lands in the Counties of Pinal and Maricopa, in the District of Arizona, said lands being the same as those included within the boundaries of the Gila River Indian Reservation, situate and located in the following townships South and East of the Gila and Salt River Base and Meridian as follows, to-wit:

> Township 1 South, Ranges 1 and 2 East; Township 2 South Ranges 1,2,3 and 4 East; Township 3 South Ranges 2,3,4,5 and 6 East; Township 4 South Ranges 2,3,4,5,6,7 and 8 East; Township 5 South Ranges 4, 5, 6, 7 and 8 East

and comprising approximately 371,422 acres of land which is the home and abiding place of certain Indians to the number of 5,000 more or less, wards of the plaintiff, and to whom the plaintiff has under Act of Congress of February 8, 1887, (24 Stat. 388) and amendment by Section 17 Act of June 25, 1910 (36 Stat. 855) duly allotted such areas of said lands as in the opinion of the Secretary of the Interior have been for the best interest of said Indians, aggregating 49,896 acres, more or less, said Indians being chiefly of the Pima tribe of Indians; that pursuant to Act of Congress dated February 28, 1859 (11 Stat. 401) and in the year, to-wit: 1859, the said lands to the extent of 64,000 acres were withdrawn and set apart as the Gila River Indian Reservation by Proclamation of the President of the United States and the balance of said lands were so withdrawn and reserved by further Proclamation of the President of the United States dated, to-wit: August 31, 1876, January 10, 1879, June 14, 1879, May 5, 1882, November 15, 1883, May 8, 1911, July 31, 1911, December 16, 1911, June 2, 1913, August 27, 1914, March 18, 1915, and July 19, 1915; that the said lands comprising the said Gila River Indian Reservation are now and at all times since the said 28th day of February, 1859, and for a long period of time prior thereto have been well fitted and adapted for uses of agriculture and grazing and are and may be advantageously utilized for such purposes, for which purposes the said Pima Indians appropriated from the waters of the Gila River flowing through the said Reservation such amount of water as was necessary for the economical and successful irrigation and cultivation of said lands; that the said Pima Indians would have utilized the entire flow of said Gila River for the economical and successful cultivation of their lands if they had not been interfered with, in this regard, by certain of the defendants, taking from the

upper reaches of the Gila River and its tributaries that water to which said Indians were entitled.

3. (b) That the plaintiff is the owner of certain lands in the counties of Gila and Graham, in the District of Arizona, said lands being the same as those included within the boundaries of the White Mountain or San Carlos Indian Reservation, situate and located in Townships 1 to 6 North, and 1 to 4 South, ranges 15 to 27 West inclusive, of the Gila and Salt River Base and Meridian, and comprising many thousand acres of land which is the home and abiding place of certain Indians to the number of 2500, more or less, wards of the plaintiff, said Indians being chiefly of the Apache tribe of Indians; that pursuant to Acts of Congress dated March 3, 1853 (10 Stat. 238), February 20, 1893 (27 Stat. 469), June 10, 1896 (29 Stat. 358), June 7, 1897, (30 Stat. 64), March 2, 1901 (31 Stat. 952), and during and after the year, to-wit: 1871, the said lands were withdrawn and set apart as the White Mountain or San Carlos Indian Reservation by Proclamations of the President of the United States dated the 9th day of November, 1871, the 14th day of December, 1872 the 5th day of August 1873, the 21st day of July 1874 the 27th day of April, 1876, the 30th day of October 1876, the 26th day of January, 1877, the 31st day of March, 1877, and the 22nd day of December, 1902; that the said lands comprising the said White Mountain or San Carlos Indian Reservation, are in part, and to-wit: to the extent of 3,000 acres more or less, now and at all times since the said 9th day of November, 1871, and for a long period of time prior thereto, have been well fitted and adapted for the uses of agriculture and grazing and are and may be advantageously utilized for such purposes, for which purposes the said Apache Indians appropriated from the waters of the

Gila River and its tributary, to-wit: the San Carlos River flowing through said reservation such amount of water as was necessary for the economical and successful irrigation and cultivation of said lands; that the said Apache Indians would have utilized more flow of the said Gila River and its tributary for the economical successful cultivation of their lands if they had not been interfered with, in this regard, by certain of the defendants, taking from the upper reaches of the Gila River and its tributary the water to which the said Indians were entitled.

3. (c) That the said Indians heretofore mentioned are agriculturalists and at the advent of the white man to the Valley of the Gila River in the early part of the sixteenth century were cultivating their rancherias and irrigating farms situated in this Valley and had been so cultivating the same for centuries prior thereto, irrigating and cultivating their lands to the extent of some 25,000 acres, and that this occupying and cultivating of their lands through irrigation methods by appropriating and using the waters of the Gila River and its tributaries had been effective many years prior to the use by any white settlers of such waters, thereby giving the said Indians the first right to the use of said waters by reason of prior appropriation and beneficial use thereof; that in enacting said Acts The Congress considered and acted upon the necessity of reserving water rights of the said Indians as well as the land which these Indians had been occupying and using long prior to the passage of said Acts; that thereafter and upon enacting the said Act of February 8, 1887, the Congress considered and acted upon the same necessity and effectively reserved the water right of the said land, by providing for the allotting of the land in severalty to the Indians entitled thereto and the Secretary of the

Interior on or about the 17th of October, 1913, approved instruction to the allotting agent in providing for the allotment of irrigable lands under said Act as amended by Section 17 of the Act of June 26, 1910, (36 Stat. 855-859).

3. (d) That thereafter and in the year 1920, the plaintiff, upon behalf of said Indians, entered into agreements with the white owners of lands in the Florence and Casa Grande Valleys, and provided for the formation of the Florence-Casa Grande project, whereby it was agreed by said white owners that the Indians of the Gila River Reservation are entitled to sufficient water to irrigate not less than 40,000 acres of land of the said Indians upon the said Reservation; that as part of the same agreements any and all appropriations of water of the Gila River and its tributaries heretofore made by the white owners of lands within the said Florence-Casa Grande Project together with all water ways, ditches and water works of every kind and description are for the use and benefit of the plaintiff including to-wit: 40,000 miner's inches of water appropriated by the Florence Canal Company, a corporation, on April 4, 1888, filed and recorded April 4, 1888 in Book 3 Miscellaneous Records, page 540 in the office of the County Recorder of said Pinal County, also all that water appropriated May 21, 1910, by the Florence Casa Grande Water Users Association together with dam and water works; appropriation filed and recorded May 24, 1910 in Book 13 Miscellaneous Records, page 6 of said Pinal County; also all the water appropriated December 29, 1910, by Florence-Casa Grande Water Users Association, together with dam and water works, appropriate filed and recorded January 3, 1911, in book 13 Miscellaneous Records, page 86 of said Pinal County; also all that water appropriated June 3, 1911, by Casa Grande Valley Water

Users Association, together with dam and water works, appropriation filed and recorded June 12, 1911, in book 13 of Miscellaneous Records, pages 267 et seq. of said Pinal County; also all that water appropriated March 28, 1912, by Casa Grande Valley Water Users Association, together with dam and water works, appropriation filed and recorded March 29, 1912, in Book 13 of Miscellaneous Records, pages 521 et seq. of said Pinal County; also all that water appropriated March 28, 1912, by Casa Grande Valley Water Users Association, together with dam and water works, appropriation filed and recorded March 29, 1912, in book 13 of Miscellaneous Records, pages 523 et seq. of said Pinal County; also all that water appropriated August 30, 1913, by Case Grande Valley Water Users Association, together with dam and water works, appropriation filed and recorded September 4, 1913 in book 14 of Miscellaneous Records, pages 369 et seq. of said Pinal County; also all that water appropriated August 30, 1913, by Casa Grande Valley Water Users Association, together with dam and water works, appropriation filed and recorded August 4, 1913, in Book 14 of Miscellaneous Records, pages 370 et seq. of said Pinal County; also all that water appropriated August 30, 1913; by Casa Grande Valley Water Users Association, together with dam and water works, appropriation filed and recorded September 4, 1913; in book 14 of Miscellaneous Records, pages 371 et seq. of said Pinal County; also all that water appropriated August 30, 1913, by Casa Grande Valley Water Users Association, together with dam and water works, appropriation filed and recorded September 4, 1913, in book 14 of Miscellaneous Records, pages 372 et seq. of said Pinal County; also all that water appropriated September 19, 1913 by Casa Grande Valley Water Users Association,

together with dam and water works, appropriation filed and recorded October 14, 1913 in Book 14 of Miscellaneous Records, pages 3865 et seq. of said Pinal County; also all that water appropriated September 19, 1913 by Casa Grande Valley Water Users Association, together with dam and water works, appropriation filed and recorded October 14, 1913; in Book 14 of Miscellaneous Records, pages 387 et seq. of said Pinal County; also all that water appropriated September 19, 1913 by Casa Grande Valley Water Users Association, together with dam and water works, appropriation filed and recorded October 14, 1913 in Book 14 of Miscellaneous Records, pages 386 et seq. of said Pinal County; also all that water appropriated September 19, 1913, by Casa Grande Valley Water Users Association, together with dam and water works, appropriation filed and recorded October 14, 1913, in Book 14 of Miscellaneous Records, pages 387 et seq. of said Pinal County; also all that water appropriated September 19, 1913, in book 14 of Miscellaneous Records, pages 388 et seq. of said Pinal County; also all that water appropriated September 19, 1913, by Casa Grande Valley Water Users Association, together with dam and water works, appropriation filed and recorded October 14, 1913 in Book 14 of Miscellaneous Records, pages 389 et seq. of said Pinal County; also all that water appropriated September 19, 1913, by Casa Grande Valley Water Users Association, together with dam and water works, appropriation filed and recorded October 14, 1913 in Book 14 of Miscellaneous Records, pages 390 et seq. of said Pinal County; also all that water appropriated September 19, 1913, by Casa Grande Valley Water Users Association, together with dam and water works, appropriation filed and recorded October 14, 1913 in Book 14 of Miscellaneous Records, pages 391 et seq. of said Pinal County; also all that water

appropriated May 21, 1910, by Florence-Casa Grande Valley Water User's Association, together with dam and water works, appropriation filed and recorded May 27, 1910 in Book 3 of Miscellaneous Records, pages 127 et seq. of Gila County; also all that water appropriated December 29, 1910, by Florence-Casa Grande Valley Water User's Association, together with dam and water works, appropriation filed and recorded January 9, 1911 in Book 3 of Miscellaneous Records, pages 184 et seq. of Gila County; also all that water appropriated June 3, 1911, by Casa Grande Valley Water Users' Association, together with dam and water works, appropriation filed and recorded June 10, 1911 in Book 3 of Miscellaneous Records, pages 227 et seq. of Gila County.

3. (e) That the plaintiff, by its duly authorized agent James B. Alexander heretofore and on the 28th day of February, 1911, duly appropriated for and on behalf of certain Pima and Papago Indians, wards of the United States for the use of said Indians for irrigation, domestic use, stock and any other beneficial purpose on their lands on the said Gila River Reservation 20,000 inches, miner's measurement of the flood water flow of the water flowing in the Gila River at a point on the Gila River at the intersection of that certain canal known as the Little Gila River with the Gila River in Section 4 Township 5 South, Range 7 East of the Gila and Salt River Base and Meridian, said appropriation of water being an addition to all water theretofore appropriated for the use of said Pima and Papago Indians and theretofore used by them, and for the purpose of irrigating unsurveyed lands within the said Gila River Indian Reservation, plaintiff giving notice of intention to build and maintain a dam in the said Gila River at the aforesaid intersection and to clean out and

widen the aforesaid Little Gila River and to use the aforesaid Little Gila River and a main canal to conduct the water appropriated upon the lands of the Indians in said Gila River Reservation, also notice of intention to construct and maintain other canals headed on the Little Gila River as aforesaid at points wherever feasible, to irrigate the said Indian lands; said notice of appropriation being filed and recorded in the office of the County Recorder of said Pinal County, April 4, 1911, in Book 14 of Miscellaneous Records at pages 200 et seq; that the plaintiff by its duly authorized agent James B. Alexander heretofore and on the 28th day of February, 1911, for and on behalf of said Pima and Papago Indians, wards of the plaintiff, resident on the South side of the Gila River in said Gila River Indian Reservation duly appropriated for said Indians, for irrigation domestic use, stock and other beneficial purposes on their lands on the said Reservation 3,000 inches miner's measurement, of the flood water flow of the water flowing in the Gila River and at a point on the Gila River in Section 12 Township 5 South, Range 8 East of the Gila and Salt River Base and Meridian, approximately in the Southwest quarter of said Section 12 and about one-eighth of a mile of the South line of said quarter section, said appropriation water being in addition to all water theretofore appropriated for the use of said Indians and plaintiff also gave notice of intention to enlarge, build and maintain a dam in the said Gila River at the said point in Section 12 and to divert water thereof and to enlarge, construct and maintain a canal from said point of diversion to the lands of the said Gila River Reservation, the said proposed enlarged canal to follow a canal constructed by the said Indians in the year 1882 and through which the said Indians have conducted each year since 1882 from 300 to 1,000 miner's inches of the normal flow

and flood water of the Gila River for irrigation of their farming lands above described except when prevented as hereinafter set forth, said appropriation being filed and recorded April 4, 1911, in the office of the County Recorder of said Pinal County in Book No. 13 Miscellaneous Records pages 202 et seq; that the plaintiff by its duly authorized agent James B. Alexander heretofore and on the 28th day of February, 1911, for and on behalf of said Indians, wards of the United States, duly appropriated for the use of said Indians for irrigation, domestic use, stock and for other beneficial purposes on their lands on said reservation 3,000 miner's inches of the Flood water flow of the water flowing in the Gila River at a point on the Gila River in Section 12, Township 5 S, Range 8 East of the Gila and Salt River Base and Meridian, approximately in the Northwest quarter of said section and about one-quarter of one mile south of the North line of said quarter section, this appropriation being an addition to all water heretofore appropriated for the use of the said Indian [Illegible] the plaintiff also gave notice of intention to enlarge, build and maintain a dam in the said Gila River at the said point of diversion together with notice of intention to enlarge, construct and maintain a canal from said point of diversion to said lands on the Gila River Reservation, the said proposed, enlarged canal to follow a canal constructed by the said Indians in the year 1868 through which the said Indians have conducted each year since the year 1868 1,000 miner's inches of the normal flow and the flood waters of the Gila River for the irrigation of their farming lands except when prevented as hereinafter set forth, said appropriation being filed and recorded on April 4, 1911, in the office of the County Recorder of said Pinal County in Book 13 of Miscellaneous Records at page 203; that the plaintiff by its duly authorized agent James B. Alexander

heretofore and on the 16th day of February, 1911, for and on behalf of said Indians, appropriated for said Indians for irrigation, domestic use, stock and for any other beneficial purpose on their lands on said Gila River reservation 15,000 inches, miner's measurement, of the flood water flow of the water flowing in the Gila River at a point on the Gila River in the Northwest quarter of Section 12 Township 4 South, Range 6 East of the Gila and Salt River Base and Meridian, approximately in the center of the North line of said quarter section where a canal and head gates have been constructed to divert the flood water therein appropriated for the use of said Indians and for the purpose of irrigating unsurveyed lands within said Gila River Indian Reservation, and plaintiff thereby gave notice of intention to build and maintain a diversion dam in the Gila River at the said point and that it had constructed a canal from said point to the lands of the said Indians [Illegible] said Gila River Indian Reservation for the purpose of constructing 15,000 miner's inches of flood water of the Gila River for irrigation of the farming lands above described, the said appropriation being in addition to any water theretofore appropriated for the said Indians, which notice of appropriation was [Illegible] [Illegible] April 4, 1911, in the office of the County Recorder of Pinal County in Book 13 Miscellaneous Records, page 205 et seq; that the plaintiff by its duly authorized agent Graves Moore, acting by the direction of the Secretary of the Interior heretofore and on the 16th day of May, 1912, duly located claimed and appropriated water of the Gila River and its tributaries, torrential or otherwise, flowing in the channel of the Gila River to the extent of 150,000 acre feet, for the purpose of irrigation and domestic use of lands reserved for Indians in Pinal and Maricopa Counties, Arizona, giving Notice of intention to construct and maintain a

dam across the Gila River for the diversion of said quantity of water at or near a point within the Gila River Indian Reservation in Township 4 South, Range 7 East of the Gila and Salt River Pass and Meridian, known as the Santan Canal Heading or some other suitable point East thereof, also giving notice of intention to construct and maintain a canal on the North side of the Gila River and a similar canal on the South side of the Gila River commencing at points in the vicinity of the diversion dam to be thereafter constructed across said river and continuing up to its respective terminus at the extreme West end of the Gila River Indian Reservation, for conveying water to said lands, expressly reserving the right to change the point of diversion, this application being no waiver of any property interests or right theretofore reserved held or claimed by this plaintiff for Indians under any Act of Congress or Executive Order or under filings, locations, notices, appropriations or claims theretofore made, posted, recorded or acquired by purchase or conveyance by or to the United States or its Indian wards, which notice of appropriation was filed and recorded in the office of the County Recorder of said Pinal County, May 17, 1912, in Book 13 of Miscellaneous Records, pages 570 et seq; plaintiff by its duly authorized agent Graves Moore acting by the direction of the Secretary of the Interior heretofore and on the 6th day of June, 1912, duly located, claimed and appropriated [illegible] [illegible]the Gila River and its tributary, torrential or otherwise flowing in the channel of the Gila River to the extent of 150,000 acre feet, for the purpose of irrigation and domestic use on lands reserved for Indians in Pinal and Maricopa Counties, said 150,000 acre feet to include that part of the normal or low water flow of the Gila River which the said Indian lands were then entitled to

receive for their irrigation by right of prior appropriation and use, giving notice of intention to construct and maintain a dam across the Gila River for the diversion of said quantity of water at a point within the Gila River Indian Reservation in Township 4 South, Range 7 East of the Gila and Salt River Base and Meridian, known as the Santan Canal Heading or at some other suitable point, plaintiff also giving Notice of intention to construct and maintain a canal on the North side of the Gila and a similar canal on the South side of the Gila River commencing at a point in the vicinity of a diversion dam thereafter to be constructed across said River and continuing each to its respective terminus at the extreme West and of the Gila River Indian Reservation and reserving the right to change the point of diversion, the plaintiff not waiving any property interest or right theretofore reserved, held or claimed by the United States for Indians under any Act of Congress, Executive Order or filings, notices, [Illegible] locations, appropriation or claims theretofore made, posted, [Illegible] recorded or acquired by purchase or conveyance by or to plaintiff or its ward, which notice of appropriation was filed and recorded on June 8, 1912, in the office of the County Recorder of said [Illegible] Pinal County in book 13 Miscellaneous Records at pages 583 et seq.; that plaintiff by its duly authorized agent French Gilman acting by direction of the Secretary of the Interior heretofore and on the 2nd day of September, 1912, duly located, claimed and appropriated water of the Gila River and its tributaries torrential or otherwise flowing in the channel of the Gila River to the extent of 150,000 acre feet per annum for the purpose of irrigation and domestic use on lands reserved for Indians in Pinal and Maricopa Counties, said 150,000 acre feet to include that part of the normal or low water flow of the Gila River which said Indian lands were then

entitled to receive for their irrigation by right of prior appropriation and use, plaintiff also thereby giving notice of intention to construct and maintain a dam across the Gila River for the divers of said quantity of water at or near a point within the Gila River [Illegible] Reservation in Township 4 South, Range 7 East of the Gila and Salt [Illegible] River Base East and Meridian, known as the San Tan canal heading or other suitable use plaintiff also giving notice of intention to construct and maintain a canal on the North side of the Gila River and a similar canal on the South side of the Gila River, each commencing at a point in the vicinity of diversion dams to be constructed across said River and continuing each to its respective terminus at the extreme Western [Illegible] of the Gila River Indian Reservation, for conveying water to the said Indian lands, and reserving the right to change the point of diversion, by which notice the plaintiff did not waive any property interests or rights theretofore reserved, held or claimed by the United States for Indians under any Act of Congress or Executive Order or under filings, notices, locations, appropriations or claims, heretofore made, posted, recorded or acquired by purchase or conveyance by the United States or its Indian wards, which notice of appropriation was duly filed and recorded in the office of the County Recorder of Pinal County on September 3, 1912, in Book 14 of Miscellaneous Records at pages 52 et seq.; that the plaintiff by its duly authorized agent R.A. Ward, acting under the direction of Secretary of the Interior on the 22nd day of May, 1916, duly [Illegible], [Illegible] and appropriated the waters of the Gila River to the extent of 2,000 cubic feet of water per second for the purpose of irrigating lands in the Gila River Indian Reservation and public and private lands in Pinal County and for domestic and other beneficial uses thereon, plaintiff giving

notice of [Illegible] to construct and maintain a dam across the Gila River for the diversion of said water at a point in the Northwest quarter of Section 8 Township 4 South, Range 11 East and near the center of said section plaintiff also giving notice of the intention to construct and maintain a canal for the carriage of said water to the said lands commencing at the said point of diversion and running Southeasterly to the so-called Little Gila River, a part of the system of canal and ditches then existing and being operated on said reservation together with notice of intention to construct or otherwise provide said canal with branch and lateral canals and ditches sufficient to supply all the lands of said Gila River Indian Reservation, plaintiff thereby reserving, locating, claiming and appropriating, in addition to the waters so appropriated, reserving to its and to the Indians of said reservation and to its other Indian wards all the waters of the Gila River, and all property rights of any nature theretofore reserved, appropriated to it or claimed by or for the United States or its Indian wards or any of them, the said notice of appropriation being duly filed and recorded in the office of the County Recorder of Pinal County May 22, 1916, in Book 15 of Miscellaneous records at pages 393, et seq.

4. That pursuant to Act of Congress approved August 1, 1914, to-wit: the (Indian Appropriation Act) there was provided for all purposes necessary for the proper conduct of surveys, observations and examinations to determine the extent of water rights in and to the normal and flood flow of the said Gila River, in connection with the old Indian ditches on the Gila River Indian Reservation an appropriation by Congress of the sum of $50,000; that a report, known as the San Carlos Irrigation Project report was duly made to the Commissioner of

Indian Affairs, Department of the Interior, pursuant to said act on to-wit: November 1, 1915, by the Engineer of the Indian Service, which report recommended as follows, to-wit:

> 1. That part of the San Carlos project involving the construction of the San Carlos dam and reservoir be deferred.
>
> 2. The two diversion dams across the Gila River described in this report, one above Florence [illegible] second above Sacaton, with the necessary feeder canals, be constructed in the immediate future.
>
> 3. The title to the San Carlos reservoir site and as far as practicable the title to the other reservoir sites along the Gila and its tributaries be retained by the United States.
>
> 4. The investigations to determine the effect of the irrigation in the Duncan and Solomonville Valleys upon the flow of the Gila at and near the Gila River Reservation be continued. This is important to enable the Government to properly protect the water rights of the reservation and those of the project here recommended.
>
> 5. To provide for the construction of the diversion dams and main canals, $1,361,177 be appropriated to remain available until the completion of the work.

that thereafter and pursuant to Acts of Congress approved respectively May 18, 1916, (Indian Appropriation Act) and May 25, 1918, (Indian Appropriation Act), the plaintiff by and through the said Indian Service constructed the said diversion dam and necessary controlling works for diverting water from the Gila River at the said point above

Florence, Arizona, and is now constructing a diversion dam and necessary controlling works for diverting water from the Gila River at the said point above Sacaton, Arizona, which diversion dams were, by the said Acts of Congress constructed as a part of a project for the irrigation from the natural flow of the Gila River, of the said lands within the Gila River Indian Reservation together with certain other public and private lands in the said County of Pinal comprising 27,000 acres and being situate and located in Townships South and East of the Gila and Salt River Base and Meridian as follows, to-wit

Township 4 South Ranges 8, 9 and 10 East,
Township 5 South, Ranges 7, 8, 9 and 10 East,
Township 6 South, Ranges 5, 6, 7, 8 and 9
East, Township 7 South, Ranges 5, 6 and 7 East;

that the water diverted from the Gila River by the said diversion dams has been at all times since the construction thereof and is now distributed by the Secretary of the Interior to such lands in said Gila River Indian Reservation as the Secretary of the Interior has designated as temporarily entitled to be irrigated as a part of said project and to those lands to which said Secretary has permanently devoted the Indian water rights of said project and to the said 27,000 acres of privately owned lands heretofore designated and selected by the Secretary of the [Illegible] having the best right to the use of the waters of the Gila River in accordance with the respective rights and priorities of such lands to the beneficial use of the said waters as determined by said agreements heretofore made by and between the owners thereof and the said Secretary; that the construction charge for the actual cost of said diversion dams and other works and rights is to be by the Secretary of the Interior divided equitably between

the said Indian lands and the said 27,000 acres of private and public lands served thereby will be charged to and will be paid by the owners and entrymen; of the said 27,000 acres of lands in accordance with the said Appropriation Acts of the United States relating to payment for the said diversion dams and other works and rights, and the said charges constitute a subsisting and valid lien upon said 27,000 acres; that the owners of the said 27,000 acres of lands, so designated by the Secretary of the Interior, have heretofore conveyed to the plaintiff, for use in behalf of the said Indians and themselves, their respective rights of water appropriation, together with certain of their canals and other works, and by virtue of said conveyances the plaintiff is entitled to the use and control of all of the water which has heretofore been appropriated for the use of said lands.

That the said Indian Service is, by Act of Congress approved June 7, 1924, (San Carlos Irrigation Project) authorized to construct a dam across the canyon of the Gila River near San Carlos in the District of Arizona, as a part of said San Carlos Irrigation Project as contemplated in the said report of the Chief Engineer of the Indian Irrigation denied to the Commissioner of Indian Affairs of November 1, 1915, at a limit of cost of $5,500,000 for the purpose, first, of providing water for [Illegible] irrigation of lands allotted to Pima Indians on the said Gila River Reservation, Arizona, now without an adequate supply of water, and, second, for the irrigation of such other lands [Illegible] private ownership, as in the opinion of said Secretary, can be served with water impounded by said dam, without diminishing the supply necessary for said Indian lands.

5. That the sole source of water necessary and proper for the economical and successful irrigation and cultivation of such lands under the said San Carlos Irrigation Project is the said Gila River together with its tributaries thereto lying to the East of the said Gila Indian Reservation, to-wit: The San Pedro River, the San Carlos River, San Francisco River, Blue River and Eagle Creek; that the average low normal water flow of said Gila River and its tributaries excepting the San Pedro River at the site of the said proposed storage dam, to-wit: San Carlos is approximately 130 second feet; that the minimum run-off per annum of the said Gila River and its tributaries excepting the San Pedro River at the said proposed dam site is so small that all lands entitled to water may not be served unless the plaintiff is allowed to control the diversion of all the water in the Gila River and impound them in storage without interfering with the legal rights of the defendants; that the maximum run off per annum of the said Gila River and its tributaries excepting the San Pedro at the said proposed dam site is 1,589,800 acre feet; that the low water average run-off per annum of the said Gila River and its tributaries excepting the San Pedro at the said proposed dam site is less than 252,529 acre feet; that the mean annual flow of the said Gila River and its tributaries excepting the San Pedro at the said proposed dam site is 406,000 acre feet; that a large proportion of the total run-off occurs in times of flood water and that said times of flood water are and have been for many years intermittent, allowing four or five dry years to occur successively that the flow of the said San Pedro River at all times amounts to one-tenth more or less of the said flow of the Gila River and its tributaries hereinabove mentioned; that the successful and economical operation of the said San Carlos Irrigation Project is dependent upon the control by

the plaintiff of the diversion of the entire flow of the said Gila River and its tributaries to those defendants who are legally entitled thereto, to the end that the maximum supply of water may come at all times to the said proposed storage dam and the said diversion dams comprising the said San Carlos Irrigation Project as hereinabove described; that the said Gila River Indian Reservation as a whole and the said 3,000 acres of the White Mountain or San Carlos Indian Reservation will be made unfit for the purposes for which it was created and incapable of maintaining the said Indians if the waters of the Gila River and its tributaries are allowed to be unduly diverted before coming to the storage works of the said San Carlos Irrigation Project; that by means of the diversion and use of the waters of the said Gila River and its tributaries as contemplated by the said Acts of Congress hereinabove mentioned the United States will be enabled more effectually to train, encourage and accustom the said Indians residing upon said reservations to habits of industry and to promote their civilization and improvement and the control by the plaintiff and proper use of all of the waters of the said Gila River and its tributaries is necessary for these purposes; that by the unauthorized or unlawful taking of the water to which said Indians are and have been entitled certain of the defendants have obtained for themselves appropriations or attempted appropriations of waters of said Gila River and its tributaries, all to the loss and damage of said Indians and the plaintiff.

6. That by reason of the matters and things hereinabove set forth the United States has reserved and appropriated and owns and is entitled to use, directly or through the said San Carlos storage dam for said San Carlos irrigation project and on the aforesaid lands and any lands

now or hereafter to be embraced therein, and for and on said Indian Reservations, whether embraced within said project or not, and for power purposes, all of the waters of the said Gila River and its tributaries, whether natural flow or flood waters which may be necessary for the economic and successful irrigation and cultivation of said lands continuously throughout the year without undue interference by the defendants.

7. The defendants and either of them claim to have some right, title, or interest in to or of the waters of the said Gila River and its tributaries in the District of Arizona and in the District of New Mexico, or claim the right to divert said waters or some of them from said river in Arizona or New Mexico and to carry them by canals or ditches into and use them in Arizona or New Mexico, and they and either of them claim the right to divert said waters or some of them from said river or its tributaries and to use them for irrigation, power, or other purposes, and they and either of them have diverted and are diverting or threaten to divert said waters or some of them from said Gila River or its tributaries and to use them for irrigation, power or other purposes that the interests of the defendants and either of them in the said Gila River, its tributaries and the waters thereof as claimed by said defendants and either of them are numerous and various, and under said claims the defendants and either of them are diverting or will divert unless restrained by this court, the said waters or a part thereof by means of their various canals, its ditches or other equipment to the loss and damage of the plaintiff, thereby making it impossible for the plaintiff to fulfill its duty as directed by the aforesaid Acts of Congress, and either of them; that the flow of the waters in the said Gila River and its tributaries is fluctuating and

irregular, varying greatly from day to day, month to month, season to season and year to year, and in seasons of scarcity and at times of low waters and waters of said Gila River and its tributaries are insufficient to supply the claims of all of the claimants thereto or of the parties hereto that the plaintiff has no knowledge or information sufficient to form a belief of the exact nature of the claims of the defendants or of the claims of either of them to the use of said water [Illegible] to the extent, priority or otherwise, either as against the plaintiff or as against each other; that the rights to the use of said waters as claimed by the defendants and either of them are in conflict with and adverse to the rights of the plaintiff as hereinabove set forth and with each other and the rights claimed by said defendants and either of them if exercised would and when exercised do diminish the volume of the waters in said Gila River and its tributaries so as to deprive the plaintiff of the amount of water to which it is entitled.

8. Forasmuch as the plaintiff has no remedy in the premises by the strict rules of the common law and can obtain relief only in a court of equity where matters of this nature are properly cognizable and relievable, and forasmuch as the aforesaid acts of the defendants and either of them, if continued will result in irreparable injury and damage to the plaintiff, and forasmuch as the plaintiff cannot properly protect its rights in and to the said waters until the several rights of the various claimants, parties hereto, to the use of the waters flowing in said Gila River and its said tributaries in Arizona and New Mexico have been settled, and the extent, nature, and order in time of each right to divert said waters from said Gila River and its tributaries has been judicially determined, and forasmuch as the plaintiff cannot properly protect its rights in

and to the said waters otherwise than is herein sought without necessitating a multiplicity of suits, plaintiff therefore prays:

FIRST: That a subpoena may be issued out of and under the seal of this Honorable Court directed to the above named defendants who are residents of the said District of Arizona as aforesaid and that warning orders may be duly issued to such of said defendants as are residents of the District of New Mexico and that an order for service upon such defendants as cannot be found be duly published, according to law commanding them and each of them to appear before this Honorable Court on a certain day and under a certain penalty to be herein inserted, to answer this Bill of Complaint sentence by sentence and paragraph by paragraph the same as if the same were again repeated [Illegible] him thereunto particularly interrogated, setting up fully [Illegible] claims to the waters of the said Gila River and its tributaries;

SECOND: That the court by its decree determine the relative rights of the parties hereto, in area and extent, and in duration according to their relative rights respectively in priority of appropriation, in to and of the waters of the said Gila River and its tributaries in Arizona and New Mexico, including natural flow and flood waters, to the end that it may be known how much of said waters may be diverted from said river by the parties hereto and for what purposes, where, by what means of diversion and with what priorities;

THIRD: That the court decree to the United States of America the water rights hereinabove set forth and claimed by and for the United States, on behalf of the Indians and all other persons, and quiet its title therein

and thereto, and enjoin said defendants and either of them from interfering therewith, and provide such other means for the carrying out of its decree herein as may be proper;

FOURTH: That the court appoint and authorize its Water Commissioner to act during the pendency of this cause to make frequent measurements of the flow of the Gila River and its said tributaries and to regulate the diversions and uses of water by the defendants under the orders and direction of this court during the time while this suit is pending, without prejudice to any right which any party hereto may hereafter establish.

FIFTH: That the plaintiffs have such further relief or such other relief as may be agreeable to equity together with general relief and recover its costs herein incurred.

And plaintiff will ever pray.

JOHN G. SARGENT
The Attorney General
of the United States
By /s/ Harold Baxter
Special Assistant to the
ttorney General of the
United States

UNITED STATES OF AMERICA,)
)
DISTRICT OF ARIZONA,) ss.
)
COUNTY OF MARICOPA.)

HAROLD BAXTER being first duly sworn deposes and says: That he is the duly appointed, qualified and acting Special Assistant to The Attorney General of the United States and as such officer is authorized to institute the above entitled action; that as such officer he makes

this affidavit for and on behalf of the United States of America, plaintiff herein; that he has prepared the foregoing Bill of Complaint and knows the contents thereof; that the matters and things therein alleged are true and are based upon his knowledge, information and belief and upon data furnished to him by the Department of the Interior.

/s/ Harold Baxter

Subscribed and sworn to before me this 2nd day of October A.D. 1925.

/s/ Allan C. Elder
Notary Public in and for
Maricopa County,
State of Arizona

[SEAL]

My commission expires January 23, 1928.

APPENDIX 2

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE DISTRICT OF ARIZONA

THE UNITED STATES OF AMERICA, Plaintiff, -v- GILA VALLEY IRRIGATION DISTRICT, ET AL, Defendants.	GLOBE EQUITY NO. 59. AMENDED COMPLAINT.

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1. The United States of America, having first obtained leave of the Court, brings this, its Amended Bill of Complaint against the following named defendants:

GILA VALLEY IRRIGATION DISTRICT;
Brown Canal Company:

Edward Carpenter, Ezra Curtis, Estate of Damas DeLeon, Juvenal Perolas, Administrator, Claro Dominiques, J. W. Karven, Catalina Entzminger, Amadeo Fajardo, L. B. Head, P. Johnson, David Jurado, Abran Eadrid, Edwin Moody, Espedion Sadilla, Abel Sanchez, Adiel Sanchez, Daniel Sanchez, Eliseo Sanchez, Isias Sanchez, Manuel Sanchez, Santos Serna, T. J. Steward, John T. Traylor, H. C. Usher, Estate of Harry Van Order, Harry Van Order, Administrator;

Colvin-Jones Canal Company:

W. F. Bollinger, Hugh C. Hamman, George W. Healy, C. N. Higgins, Mrs. W. E. Irwin;

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Colvin-Jones Consolidated Ditch Company;
Curtis Canal Company:

Jaared T. Brown, Adelaide M. Bryce, Heber B. Bryce, E. G. Bullard, J. D. Busby, Frank Carpenter, Lester Carpenter, William Carpenter, Antone Christensen, John D. Colvin, Mrs. Elizabeth Curtis, Eugene Curtis, F. M. Ferrell, C. E. Ferrin, Thomas F. Fuller, William Fuller, E. E. Hancock, Ira Hancock, Jesse A. Hancock, Elijah Hawkins, J. N. Hawkins, Scott Holladay, Asa B. Kempton, A. J. Kempton, Calvin I. Kempton, Fred Kempton, Heber Kempton, Heber C. Kimball, Layton & Ison, Amy T. Leavitt, Claude M. Lee, James A. McBride, A. F. McEuen, E. D. McEuen, E. W. McEuen, M. P. McEuen, Virgil R. McEuen, W. G. Marshall, Miles Messinger, Anna M. Moyes, Joseph Moyes, Aron T. Nelson, E. Palmer, Isaac O. Palmer, Lee L. Palmer, Roy Palmer, Van D. Palmer, Henry E. Plumb, J. M. Plumb, D. Raper, B. O. Rapier, John Saline, W. D. Saline, Alva Thatcher, L. M. Thatcher, Perry Tyron, Henry A. Waters, A. A. Wilkins;

Dodge Canal Company:

Lewis Allen, H. J. Anderson, C. D. Boren, W. A. Carter, Sr., Estate of E. L. Carter, Alof F. Carter, Administrator, A. J. Curtis, Mrs. Frank Curtis, Thomas Dodge, Benjamin Echols, H. B. Elledge, C. E. Farley, F. A. Ferrell, I. A. Follett, Joseph E. Follett, John H. Foster, John Hicks, A. C. Hunt, Leo Keiffer, Earl Larson, Ephriam Larson, James M. Larson, Lehi Larson, Sr., W. A. Lines, D. C. McBride, P. H. McBride, P. H. MC-Bride, Jr., W. E. McBride, C. J. McElroy, Martha McElroy, J. A. Mack, J. H. Mack, S. S. Marshall, C. A. Matthews, D. H. Matthews, Eliza Matthews, Jane L. Mattice, Lewis P. Mattice, P. A. Morton, F. Sanchez, Roy Saline, William C. Taylor, A. T. West, Mrs. Charlotte Wilkins;

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Fort Thomas Consolidated Canal Company:

L. A. Adams, George P. Ballard, Pablo Barela, Thomas H. Bell, Mrs. John J. Birdno, E. W. Black, L. J. Brown, Jr., William Boren, A. J. Bryce, David J. Brude, E. P. Bryce, W. C. Bryce, John Carpenter, Charles S. Clark, H. L. Colvin, Grady Coppedge, Charles E. Dallas, A. B. Decker, Mrs. Henry Dial, J. H. Elmer, C. J. Farrington, Robert Ferrin, J. H. Fine, Juan Garcia, Forrest Gilliland, J. L. Green, C. J. Grover, G. J. Hatch, Sam Henry, Mrs. Clara Hinton, J. N. Holyoak, William H. Holyoak, E. D. Householder, Thomas H. Hundley, Mrs. S. L. Hunter, Charles P. Johns, Norman J. Johnson, James E. Jones, R. H. Kempton, C. M. Layton, Jr., Charles M. Layton, Claude M. Lee, J. Y. Lee, A. O. Mack, Angus Maloy, M. D. Maloy, George A. Mathews, Emma B. Mellinger, P. M. Merrill, Leslie Montierty, Wendell Montierth, D. T. Notes, P. L. Notes, J. R. Naillon, Asa Packer, E. K. Packer, Jacob Peters, W. A. Pitt, W. E. Platt, E. M. PLUMB, J. E. Pulsipher, T. J. Rex, S. E. Reynolds, George F. Richards, Gilbert Richardson, W. R. Roach, David Rogers, C. N. Rose, Niels J. Roseberry, R. R. Shipp, A. A. Smith, L. W. Smith, Charles F. Solomon, W. R. Summers, L. M. Taylor, George A. Todd, W. O. Tuttle, Oscar Tyler, William O. Tyler, M. P. Tyron, Charles Wamslee, William Wamslee, F. A. Webster, A. E. Weech, T. L. Willis, Alonzo Winsor, Carrie B. Yett, Dan Young;

Fourness Canal Company:

Mrs. Clara Fourness, J. M. Grijalva, Jose Morales;

Graham Canal Company:

D. E. Adams, J. A. Allen, John Billingsley, W. M. Blair, Estate of A. N. Bryce, Bell Kempton, Administratrix, J. W. Bryce, R. A. Bryce, William E. Bryce, Mary Butler, W. F. Butler, Jr., Mrs. A. W. Chesley, J. E. Chesley, H. R. Chlarson, John C. Cosper, Guy Dixon, A. J. Dodge, J. W. Felshaw, J. A. Foster, J. L. Foutz, J. R. Golding, John L.

Hoopes, E. D. Howard, Joseph Howard, J. M. Howard, S. D. Howard, Almera Hubbard, R. D. Lamoreaux, Thomas McGuire, C. M. Mackey, Robert Mackey, Simon Mathews, John W. Mattice, Martha A. Merrill, J. R. Moore, S. N. Norton, John Nulton, J. N. Nuttall, J. I. Palmer, George O. Peck, William A. Peck, Alma Peterson, P. O. Peterson, Wilfred Peterson, Robert E. Reed, Carlysle Reynolds, George Sanders, D. W. Sanders, Francis M. Skinner, Maroni Skinner, W. H. Spafford, Pratt Stewart, Brigham Stowell, D. V. A. Talley, James M. Talley, K. V. B. Talley, J. T. Talley, T. Hugh Talley, Van Talley, Jerome Walker, J. P. Walker, Mattie Wamslee, T. W. Wamslee, Charles Watson;

Montezuma Consolidated Canal Company:

C. A. Allred, W. N. Baker, Fannie Bailey, Estate of R. H. Beers, Frank V. Beers, Administrator, Estate of Mrs. N. A. Bell, Lee N. Straton, Administrator, W. A. Bennet, John Bilby, Hyrum Bingham, J. H. Bingham, Lester Bingham, Warren Bingham, Mrs. Thomas Blake, T. F. Boggs, Charles Boots, Gratz D. Brown, Charles Burrell, George Burrell, Mrs. Jesus Carrasco, J. A. Chapman, D. W. Cheney, Aeshel Clifford, Elijah Clifford, Henry Clifford, Sr., L. A. Clifford, W. H. Clifford, Evans Coleman, James Corder, Henry Crabbe, G. L. Crawford, Mrs. Virginia Curtis, John R. Davidson, Davidsel Ellsworth, Francis Ellsworth, William Ellsworth, Hart D. Empie, Mrs. Belle Epley, Austin Evans, George C. Evans, Hugh Foster, Orson F. Foote, J. L. Freeman, Charles E. Freestone, R. L. Freestone, Victoriano Garcia, Albert Gillespie, Edward L. Gillespie, James Gillespie, Shell Gillespie, William H. Gillespie, J. W. Greenhalgh, R. H. Greenhalgh, Ramon Guana, Spence C. Heywood, Martin Jacobson, D. L. Johns, S. L. Johns, L. A. Johns, W. A. Johns, George Killian, F. E. Kirkpatrick, Guy W. Lamoreaux, Maroni Larson, Alex Layton, J. D. Lee, Marion Lee, Kimball Maxham, Ben Mauer, R. L. McAllister, H. M. Merrill, S. A. Merrill, Mrs. J. S. Miles, E. E. Montierth, M. G. Montierth, Mrs. Belle

Morris, M. Mortensen, Ernest Motes, L. A. Nelson, W. L. Nelson, Elma Olesen, Oscar Olsen, O. E. Owens, Mrs. Isabelle Pace, Joaquin Padilla, Mrs. Marcelina Padilla, Mrs. Nancy Palmer, Calista B. Peel, S. A. Powell, Sarah E. Reed, Mrs. W. R. Reed, J. F. Rhinehart, I. P. Robinson, C. B. Sale, J. W. N. Scarlett, L. B. Scarlett, S. E. D. Sears, Mrs. Martha Skinner, R. A. Smith, Sr., Mrs. W. R. Smith, Mrs. J. B. Smithson, S. A. Sowell, Mrs. C. F. Stanley, Albert Stephens, E. P. Stuermer, N. W. Stevenson, John Stowe, William H. Taylor, Mrs. H. E. Warner, Adam Welker, Arthur Welker, C. D. Welker, J. A. Welker, Willard Welker, John West, Fred H. Wiemer, W. W. Wild, Dan Williams, Estate of J. R. Williams, Isaac Williamson, Mrs. W. A. Wilson;

San Jose Canal Company:

H. L. Alexander, Sesario Alvillar, Felix Bareda, W. T. Barney, Innocente Bartolda, Severa Bartolda, Ed Blake, Wallace Branch, G. A. Bryce, V. Carrasco, W. W. Chapman, Pablo Chevarria, Ammon Curtis, Cleve Curtis, Don Curtis, Emery Adelbert Curtis, Etta G. Deller, Ramolda Elias, Ernest Ellsworth, Miguel Encinas, John C. Epley, Luther Farley, Jose Figuerroa, Elias Flores, Nora Floyd, W. R. Foote, Augustin Franco, Pedro Franco, Alma Freestone, P. H. Freudenthal, Archie Fuller, Casimiro Garcia, G. Garcia, Jesus Garcia, Jose B. Garcia, Rafael Garcia, Tomas Garcia, Marajilda Garcia, Thomas Bardner, Fernando Gervantez, Mrs. S. C. Gonzales, Epitacio Granilla, John H. Harper, Delbert Hatch, George L. Hatch, Calvin Hocker, S. N. Holman, James Jensen, J. C. Johns, Mrs. Margaret R. Kempton, Donald Kennedy, Leslie W. Layton, S. Marcus, Juan Martinez, C. V. Massey, Mrs. L. A. Massey, J. T. Massey, John M. Mattice, Mrs. F. M. Medhurst, Manuel Mandez, Louis Michelena, Mrs. M. Michelena, Sisto Molino, Francisco Montez, Jesus Montez, Cicero Morris, Frank Morris, George Albert Morris, Robert Morris, Braulio Ochoba, Victorino Olivas, A. T. Pollock, Anastacio Quiroz, W. G. Richards, Lito Rios, Jose Samora,

Andreas Serna, Mathews Stuart, Ida Tidwell, Jose Verale, Emula Viala, Jose Villareal, W. R. Waddell, F. M. Woodward, W. A. Woolsey;

Smithville Canal Company:

D. T. Adams, Joseph Alder, E. M. Allred, J. N. Allred, Mrs. Maude Allred, Mrs. Sarah Barney, Thomas Batty, Walter Batty, Mrs. J. S. Beals, R. William Bingham, W. R. Bingham, Ben Blake, I. B. Blake, William Biglet, Mrs. Artie Branam, L. S. Branam, Mrs. Sarah Bryce, Albert Carter, Ethel B. Carty, Victor Christenson, H. J. Clark, W. A. Clark, B. F. Cluff, H. V. Coombs, H. W. Crockett, W. W. Crockett, M. M. Curtis, L. C. Cutler, Mrs. Lyman Dodge, A. M. Farmer, C. J. Farrington, L. L. Follett, W. L. Follett, Karl Foster, A. Harper, George A. Hoops, D. C. Johnson, J. D. Kennison, Charles Kerby, Thomas E. Kimball, E. M. Labson, A. O. Lamoreaux, Beatrice Larson, Charles S. Larson, Joe Larson, Mrs. Olivea Larson, Orvil Larson, William Larson, Oscar G. Layton, Roy A. Layton, Al Lines, Joseph H. Lines, Milton Lines, Charles Luster, Ether McBride, Mrs. Laura McBride, Henry H. Mack, William S. Mack, Clarence Martin, J. B. Martin, J. S. Martin, Mrs. W. F. Martin, Roy A. Martin, Mrs. Chloe Martin, Gerald Merrill, G. W. Miller, Edward Moody, Winford Moody, H. L. Norton, Sr., H. L. Norton, Jr., J. C. Norton, J. E. Norton, William R. Norton, W. Ollerton, Asa Packard, Estate of Pensyl, P. C. Merrill, Administrator, E. C. Phillips, James H. Porter, W. J. Preston, Mrs. Mary Reynolds, Charles Rogers, Ethlion Saline, J. E. Schurtz, Mrs. John Shields, A. J. Shiflet, H. L. Smith, M. M. Smith, J. W. Sowell, F. R. Taylor, John E. Taylor, Antonio Vasquez, Lorenzo Watson, B. F. Whitmer, Jr., S. O. Williams;

Smithville Extension Canal Company;
Union Canal Company:

Ephriam J. Allen, John W. Allen, S. E. Allen, Della Allred, Edith M. Allred, Elden Allred, Myron J. Allred, Phoebe

Allred, Ruth Allred, Tom Aranda, Mrs. V. M. Baker, Mrs. Sophia Barney, E. D. Barry, C. M. Beal, J. H. Beal, William N. Beebe, D. W. Birdno, Mary Lorraine Birdno, Edsil Blain, S. B. Blake, H. G. Boyle, William Brunson, Manuel Burrell, Antone Carreon, P. Chendilla, Citizens' Bank, Edward M. Claridge, H. S. Clarke, Mrs. J. E. Cluff, John Cluff, Cluff & Mitchell, Estate of Cluff, Benjemin F. Cluff, Administrator, C. S. Conway, C. L. Coombs, George Coombs, Isaac Coombs, N. E. Coombs, William Coombs, Mrs. W. E. Craig, G. E. Crandall, R. D. Crandall, Mrs. Julia Daly, Willis K. Daly, Mrs. Hester Damron, Z. B. Decker, David Dodge, J. M. Dominges, Mrs. Lily Duke, Estate of Orson Elliott, W. A. Posy, Administrator, Mrs. Charlotte F. Elmer, Mrs. Sarah S. Elmer, P. Estrada, E. C. Eyring, J. A. Farley, M. P. Ferguson, Ether S. Ferrin, W. P. Ferris, W. M. Ferrin, Seth P. Fletcher, George Foote, M. S. Freeman, Lawrence Fuller, Millard Fyfe, E. Gallego, Charles Gietz, J. R. Gillmore, Mrs. Francis Goodman, George A. Gourley, Mattie Graham, Reece D. Green, F. H. Halladay (being the same person named in the original complaint as John Doe Halladay), H. G. Harms, C. D. Haynie, Estate of F. W. Hays, C. S. Conway, Administrator, C. M. Hendricks, Heber M. Higgins, Mrs. Arthusa Hoopes, Bert Hoopes, H. E. Hoopes, Sarah A. Hunt, George P. Jacobson, P. J. Jacobson, S. L. Jenkins, S. P. Jenkins, David John, Mrs. William Johns, Orlando Jolly, P. M. Kelly, Ira N. Kempton, Spencer Kimball, P. M. Kelly, Charles Kruger, Cora Kruger, C. O. Larson, Mildred B. Larson, H. W. Layton, James Layton, M. M. Layton, R. G. Layton, Jr., Mrs. W. A. Lewis, Mrs. Nisia Lindsey, Mrs. Laura McCullom, W. J. Mallon, James Mallon, G. B. Maloy, Clark Mangum, J. A. Martin, Miquel Mena, Damesio O. Meraz, P. C. Merrill, George Montierth, J. M. Moody, E. M. Morris, John W. Morris, William Morris, C. N. Motes, N. Ortiz, Elsie L. Overly, J. T. Owens, Jr., Mrs. C. R. Pace, I. J. Palmer, W. W. Pace, Mable Perkins, Maranda Perkins, Jesse C. Phillips, Rudger Phillips, Ben T. Platt, N. E. Platt, S. V. Pollack, S. V. Porter, W. A. Posy,

W. E. Posy, M. F. Preston, W. F. Preston, D. T. Preston, Harriett Pulsipher, Pursley & Nash, Jesse B. Quinn, Miles Reay, A. Rohner, H. P. Rogers, Joseph Rogers, Mrs. Louisa Rogers, Clarence Scarlett, W. F. Scarlett, J. S. Shifflet, Mrs. D. E. Smith, E. D. Smith, Joanna Smith, J. M. Smith, W. D. Spear, H. M. Tate, Sarah Taylor, P. H. Teeple, S. B. Tenny, Jr., Frank N. Tyler, George Van Gausig, W. J. Walton, Mrs. J. C. Wamalee, Fred Waughtal, Fred Webb, J. D. Webb, Estate of Webster, F. A. Webster, Administrator, O. F. Webster, William Webster, R. A. Welker, B. F. Whitmer, Sr., Mrs. Mildred Whitmer, J. M. Wilson, Mrs. Virgia R. Wilson, Young & Ridgway;

Tidwell Canal Company: E. L. Tidwell;

FRANKLIN IRRIGATION DISTRICT

Billingsley Canal Company; Billingsley Extension Canal Company; Black & McCleskey Canal Company (being the same company named in the original complaint as the Black & McCluskey Canal Company):

W. W. Brooks, R. F. Cloudt, Floyd Hightower, B. A. Wilson;

Burtcher Ditch Company; Colmenero Canal Company:

Estate of David Buck, Nellie E. Buck, Administratrix, Tim Chapman, J. K. Chilton, George H. Cosper, J. H. Cready, Mrs. M. J. Daniels; J. B. Fullerton, F. N. Gault, W. A. Gill, H. B. Harris, Waide Harris, Theodore H. Moody, J. G. Smith, Charles Telles, Sam R. Tilley:

Consolidated Canal Company; Cosper-Wilson Canal Company, Cosper & Windham Canal Company:

B. F. Billingsley, J. C. Burleson (being the same person named in the original complaint as J. C. Burlison), W. C. Craufurd (being the same person named in the original complaint as W. C. Crawford), J. M. Gilliland (being the

same person named in the original complaint as J. M. Gilleland);

Cosper-Windham Extension Canal Company; Duncan Canal Company:

T. J. Branyon, M. H. Brooks, J. W. Carter, Mrs. Maggie Cauthen, C. W. Collins, F. M. Craig, David Davis, Mrs. M. A. Dees, John Evans, J. R. Fowler, Estate of Francese, Ernesta Francese, Administrator, Mrs. S. L. Kemp, A. N. Livvix, C. C. Martin, J. A. Martin, Reputhio Moriz, J. P. Oberholser, W. U. Phillpot, Rebecca Richardson, Sarah L. Richardson, Romney Brothers, Mrs. E. M. Simmons, George Utter;

Franklin Canal Company; Greenhorn Irrigating Canal; Hill Ditch; Martin & Pearson Ditch; Martin & Pearson Irrigating Canal Company; Moddle Canal Company:

J. L. Aker, T. W. Arnett, D. E. Barlow, Silas Bradshaw, David F. Campbell, Jr., L. T. Christensen, M. A. Clause, F. M. Crockett, Bank of Duncan, Joseph C. Elledge, R. E. Elledge, W. H. Elledge, Amos Fearin, Furr & Blain, Mrs. E. A. Gale, I. B. Gale, W. T. Gale, Aubra Gilliland, Nellie R. Hoch, G. W. Johnson, R. J. McClaren, E. A. Merrill, T. S. Merrill, W. T. Mosley, L. D. Moyers, L. G. Moyers, W. F. Moyers, T. J. Nations, O. G. Odell, James Opie, W. C. Packer, C. O. Passmore, Mrs. M. E. Pittman, G. W. Quinn, J. R. Robbs, Frank Schultz, Jesse B. Simms, V. Soto, M. E. Stewart, Mrs. R. S. Stewart, George W. Stinson, T. L. Stockton, Nicholas Suarez, Alvin Warner, D. E. Wilkins, E. J. Wilkins, J. D. Wilkins, George W. Wyatt;

Rucker Ditch, Sexton Ditch Company:

H. Albert, W. Bleinstein, Mussett Cosper, and West White;

Sunset Irrigating Canal Company, York Canal Company:

Thomas Crabtree, E. Day (being the same person named in the original Complaint as John Doe Day), Gus Duncan, W. D. Tucker, Judd Webster, George A. Wilson, N. C. Wright;

VIRDEN IRRIGATION DISTRICT

Cosper-Windham Canal Company:

J. R. Beavers, H. G. Davidson (being the same person named in the original complaint as E. G. Davidson), Estate of Jasper Gale, A. T. Layton, R. H. Lunt, Arven Mortensen (being the same person named in the original complaint as Arvin Mortensen), Peter Mortensen, W. Plune Tibbets (being the same person named in the original complaint as P. Tibbets), Peter Wahlin (being the same person named in the original complaint as Peter Whelin), Mrs. T. M. Williamson (being the same person named in the original complaint as T. M. Williamson);

Greenhorn Ditch Company; Shriver Ditch Company:

W. W. Lloyd, Frank Shriver (being the same person named in the original complaint as John Shrivers), W. F. Shriver;

Sunset Canal Company:

Florentine Billaba, C. M. Brooks, R. W. Brooks, S. A. Brown, J. E. Cardon, Byron Echols, M. B. Echols, W. P. Foster, Trivio Gonzales, H. Grady, M. L. Harris (being the same person named in the original complaint as (M. F. Harris), C. F. Houlihan) being the same person named in the original complaint as C. F. Houhilan), K. J. Jensen, J.

E. Johns, R. T. Johns, Delbert Johnson (being the same person named in the original complaint as D. Johnson), D. L. Johnson, F. W. Jones, John B. Jones, Mary Jane Jones, Parley P. Jones (being the same person named in the original complaint as Perley P. Jones), T. V. Jones, Willard E. Jones (being the same person named in the original complaint as Willard L. Jones), Anna H. Lunt, G. V. Lunt, P. L. Lunt, M. J. McClaren, Orson A. Merrill (being the same person named in the original complaint as Orson Merrill), Ferley F. Merrill, Hans Mortensen, Hiram K. Mortnsen, Joseph A. Mortensen, Mrs. J. O. Pace, E. C. Payne, G. O. Payne, Junius E. Payne, Leslie B. Payne (being the same person named in the original complaint as L. Payne), H. M. Payne (being the same person named in the original complaint as H. N. Payne), R. Richardson, Henry L. Smith, B. Y. Whipple (being the same person named in the original complaint as D. Y. Whipple).

Valley Canal Company:

Mrs. Eliza Alexander, T. J. Anderson, T. W. Brown, Betty Marsh Cheatham, G. I. Elmer, Emil Girard (being the same person named in the original complaint as E. Girard), John Hagan (being the same person named in the original complaint as John Hagen), G. Lynn Hatch (being the same person named in the original complaint as G. Len Hatch), C. F. Hill, J. W. Hill, Culver Kartchner, J. H. Kerby, George A. Lunt (being the same person named in the original complaint as George Lunt), Heaton Lunt, Owen Lunt, W. V. McCarty, Frank McGrath, William Manake, Robert M. Montgomery (being the same person named in the original complaint as Robert Montgomery), H. J. Nunn, T. A. Nunn, C. Pirtel, W. T. Sanders, Andy Scott, Brooks Scott, Sinclair Realty Company, Estate of

Spoon (Ira L. Spoon, Administrator), A. L. Stewart, J. L. T. Watters, Joe Whitridge;

and A. Allen, American Smelting & Refining Company, A. A. Anderson, John N. Anderson, Joseph J. Anderson, A. P. Angle, Mary A. Antenoil, Arizona Copper Company, Arizona Hercules Copper Company, State of Arizona, Aztec Mutual Canal Company, Estate of Walter A. Baitty, Homer H. Martin, Administrator, J. W. Baker, Henry Bamesberger, Ruth R. Barham, W. B. Barham, Estate of Thomas Barrett, Dan T. Peart, Administrator, Archie L. Bartlett, Pansy Kenower Bartlett, Madelene Bassler, Maude M. Bassler, Otis J. Baughn, Albert C. Becken, Grace R. Becken, Charles F. Bennett, George P. Bennett, Jarvus D. Bennett, D. Bertoglio, J. M. Biddle, Estate of Paul C. Blackmore, Peter Corpstein, Administrator, Francis D. Blair, Clifton Bogard, C. D. Bradley, Ida M. Bradley, John R. Bradshaw, Mary W. Bradshaw, Jackson Branaman, Ira S. Brayton, Esther A. Brockway, George M. Brockway, Marshall F. Brockway, Martha M. Brockway, Charlotte Hall Brown, Elizabeth Brown, J. H. Brown, J. P. Brown, Estate of W. F. Brown, P. D. Overfield, Administrator, Sarah B. Brown, Thresa Hall Brown, John J. Buggs, George W. Burgess, Josephine Burks, Lee Robinson Burris, Burris Brothers, John W. Burris, L. B. Cadwell, Ella Carpenter, Fred E. Carpenter, J. C. Carpenter, Casa Grande Valley Bank, Ypolita Cascarilla, Castlio Ditch, Louis Cathemer, W. L. Cauthen, Mike Celeya, E. D. Chandler, Estate of W. B. Charleston, John E. Charlton, Administrator, Albert J. Christensen, Simon Cisneros, Earl G. Clemans, Edith N. Clemans, Hazel H. Clemans, Mark Twin Clemans, Winnefred W. Clemans, W. P. Clements, W. J. Clemans, Jr., Mrs. Charles E. Cleveland, Inez H. Conrad, Thomas A. Crow, Jennie Davidson, John

H. Dennison, Pearl Dennison, Robert Denton, Maurice Dodd, Mira B. Doran, Double Circle Cattle Company, John Eastman, Tracy Eastman, Dud Eldridg, W. R. Elliott, Christobell G. Ellis, Ed Elredge, Frank C. Elwell, Joe Erny, Jesus Espinosa, Jose T. Espinosa, Juan S. Feliz, Manuel S. Feliz, Pedro S. Feliz, Salvadore S. Feliz, Fidelity Savings & Loan Association, First National Bank of Florence, C. A. Fitzgerald, Florence-Casa Grande Water Users' Association, Town of Florence, J. J. Fraser, James D. Freeman, Frisco Placer Mining Company, Lissa J. Fulton, May E. Furback, Fred E. Gack, Kathrina Gack, Anna N. Gale (being the same person named in the original complaint as Anna H. Gale), Estate of George F. Gallagher, Robert Denton, Administrator, L. D. Gamble, Dale M. Garden, Richard B. George, Richard E. Geyler, M. L. Gilbert, Louis Gilson, J. H. B. Glasspie, Gold Bullion Mining Company, Jose Gonzales, John MacGregor Goodale, Nellie R. Gochenover, George F. Graham, Joseph Greene, Virginia Griffin, Charles J. Gross, Virginia Hales, Mattie M. Hall, Frank E. Hamilton, John Hamilton, A. T. Hammans, Rec., May Catlin Hansen, Dessa Harbison, Jim Harper, J. B. Harsha, John M. Hatfield, Vernon W. Havins, G. H. Head (being the same person named in the original complaint as G. E. Head), A. W. Heath, Jacob Halfenstein, John Hendricks, A. S. Henry, Grady L. Herring (being the same person named in the original complaint as G. L. Herring), W. E. Herron, T. Hinton, Arthur Houser, Lattie F. Hunt, William Jackson, F. P. Jamieson, Edith B. Jamieson, J. C. Jamieson, James C. Jayne, Jensen Brothers, Rachel Jenson, E. R. Johnson, John A. Johnson, Horace J. Johnson, Mary Johnson, F. Vernon Jones, Richard J. Jones, Julia R. Julian, Fred R. Kenower, Ola R. Kenower, A. E. Keeler (being the same person named in the original complaint as A. E. Keeler), J.

F. Kepper (being the same person named in the original complaint as J. G. Kipper); William L. Keppler, H. B. Klingenberg, William G. Knight, Anna E. Kochsmeier, Frederick Kochsmeier, Henry Kochsmeier, Sr., Henry D. Kochsmeier, Maria Kochsmeier, Frederick K. Kratzka, Gustav Kratzka, James J. Kruse, J. E. LaFleur, W. W. Lane, Andronicio A. Larona (being the same person named in the original complaint as A. A. Larona), Rafael O. Larona, Dirk Lay, Elizabeth L. Lay, Lola LeBaron, Louise LeBaron, Estate of Lola W. Lee, Dan T. Peart, Administrator, J. T. Lewis, David A. Little, Minnie Lobb, Lula O. Lockerd, London Gila Mining Company, Estate of W. H. Lonergan, T. A. Lonergan, Administrator, Theodore Lujan, Brotten Lunt (being the same person named in the original complaint as B. Lunt), Edward Lunt (being the same person named in the original complaint as Ed Lunt), Randall Lunt, Vernon Lunt, May H. McBennett, A. L. McCann, Alpha E. McCann, Minnie M. McCann, James K. McCarty, Carrie McDowell, M. W. McDowell, Clara B. McFarland, Ernest W. McFarland, Gertrude B. McGee, D. T. McGuire, Hugh McKeen, Glen C. McKenzie, James F. McManis, Elizabeth P. McMurray, William C. McNatt, R. B. Maley, Melanie Mandell, Rita Marquez, Ralph K. Marshall, Ivey Marshall, Joe Marta, David Omer Martin, Ben B. Mathews, Josiah J. Maxcy, R. D. Melick, Katherine S. Mellon, Lillian C. Merchant, Martha M. Merrill, John B. Michia, Mary L. Miles, R. M. Miller, William Milligan, J. L. Mills, James A. Mitchell, Lillian I. Mitchell, Henry G. Moeller, Sidney B. Moeur, Ed Moody, Fayette Moore, Ethel M. Moorehouse, H. W. Moorehouse, Rolland H. Moorehouse, Vashti B. Moorehouse, Morenci Water Company, George W. Morrell, Alfred Mortenson, Margarete L. Murphy, Estate of Lizzie B. Murphy, W. E. Murphy, Sr., Administrator, J. S. Murry, L. S. Nafziger, M. N. Nafziger, John Nash, Nevada

Consolidated Copper Company (being succesors in interest to the Ray Consolidated Copper Company, named in the original complaint), S. W. Newman, Nichols & Company, C. H. Niemeyer, Alice E. Nixon, Catherine A. Norviel, John O'Brien, Lillian O'Connor, Olive J. O'Connor, George A. Olney, Lewis Olesen, Peter D. Overfield, Antonio S. Padilla, Florence Palamounter, Howard G. Palamounter, Roy F. Patrick, George W. Pattee, Harriet E. Pattee, Estate of Earl P. Patterson, Thomas D. Derry, Administrator, Willie K. Pearson, Emma Pennington, Walter J. Pennington, Beatrice Perry, Amandus C. Peters, Phelps Dodge Corporation, Addie Phillips, Margaret E. Pierce, Pinal Investment Company, Ely E. Piper, Frank Pinkley, James A. Pirkens, W. M. Pollock, Tomas Ponce, Grace P. Pottebaum, Robert H. Pottebaum, Dell K. Potter, Estate of W. Y. Price, Mrs. W. Y. Price, Alice M. Prouty, Lloyd W. Prouty, W. Scott Prouty, James B. Pruett, Edwin Ralph, John Ralston, Margaret T. Randall, Henderson H. Raybourn, A. V. Read, Martin J. Reed, Fern M. Richardson, H. G. Richardson, Ralph Richardson, W. H. Roach, Jennie Roberts, S. H. Rorabaugh, Bert E. Rose, Ralph M. Rounds, Andris V. Salazar, Christiana Salazar, Jose Sanchez, Luiz Santos, John Saxman, B. W. Scholtz, S. Schultz, Estate of Elizabeth Schultz, Fred T. Armstead, Administrator, William J. Schulze, Charles M. Schwab, Emma B. Schwarm, Estate of H. H. Scorce, E. B. Newman, Administrator, Clara C. Seagoe, George P. Sellers, Serano R. Sexton (being the same person named in the original complaint as R. Sexton) Ernest D. Shade), Elizabeth Shannon, Charles K. Shannon (being the same person named in the original complaint as C. M. Shannon, Mary L. Shannon, Walter Shayeb, Charles M. Sheafe, Helen S. Sheafe, James S. Sheafe, Mary S. Sheafe, George W. Sheerer, Chloren B. Shifflet, C. M. Short, Louisa Short,

Carrie S. Sigler, John Sigfrid, George W. Sigler, J. O. Simmons, Edward H. Sinclair, Helen Slaughter, Charles R. Sligh, Earl F. Smiley, George W. Smith, Ole H. Smith, A. R. Snyder, Southern Arizona Bank & Trust Company, Herbert G. Sparks, Antonio Specia, G. C. Springer, Charles D. Stahlberg, Glodine Stahlberg, Mary E. Stevens, A. G. Stevenson, W. R. Stevenson, Dugald Stewart, S. Stewart, T. V. Stokes, Walter W. Stovall, Tim Sullivan, H. B. Summers (being the same person named in the original complaint as John Doe Summers), Mae Tiffiny, Jose Tonis, Mrs. Billie Treat, James R. Treat, Don A. Trekell, Louis M. Trekell, S. Louise Trekell, Mary E. Truman, E. S. Turville, Mrs. A. C. Urban, F. A. Urban, Augustine Villar, Joe Villar, Valley Bank of Phoenix, Calbert L. Vance, Viola C. Vance, Ed G. VanHaren, Charles H. Vann, Estate of Jose Vasques, Charles F. Bennett, Administrator, Gregoria Vasquez, Bert Vidans, Louis Voelckel, George P. Walker, Fannie Wallrich, A. A. Walsworth, Ward & Courtney Dam Company (being the same company named in the original complaint as Warel & Courtney Dam Company), Harry Ward, Roy S. Ward, Albert Warren, C. E. Waterbury, Josie Waterbury, Katie E. Weaver, Adolphus Wayrick, William Whelin, Harry C. White, White Mountain Lumber Company, Natalia M. White, Dorcas E. Whitlow, H. B. Wiggins, W. G. Williams, Josephine R. Wills, Sophia Wind, Jessie P. Woody, Soren Yensen, York Cattle Company, and Elsie De Wolf Zellweger,

Answer under oath is hereby expressly waived.

For its cause of action the plaintiff alleges:

2. That the jurisdiction of this court in this suit depends upon the fact that the United States of America is a party thereto.

3. That this suit is brought by the United States for itself and as Trustee and Guardian for the Pima and Apache Indians, occupants and possessors of large areas of land with water rights appertaining thereto in the Gila River Indian Reservation and the San Carlos Indian Reservation, respectively, in the State of Arizona; and is instituted at the suggestion of the Secretary of the Interior and by direction and authority of the Attorney General.

4. (a) That the defendant, Gila Valley Irrigation District, is an irrigation district organized and existing under the laws of the State of Arizona, havings its principal place of business in Graham County in the District of Arizona; that the defendant, Florence-Casa Grande Water Users' Association, is an association authorized under the laws of the State of Arizona to do business in the District of Arizona, havings its principal place of business in the District of Arizona; that the defendant, Franklin Irrigation District, is an irrigation district organized and existing under the laws of the State of Arizona, having its principal place of business in Greenlee County in the District of Arizona; that the defendant, Virden Irrigation District, is an irrigation district now in process of organization under and pursuant to Chapter 41, and Session Laws of the State of New Mexico, 1919, and is being organized and incorporated as a body corporate and politic of said State of New Mexico.

(b) That certain others of the above-named defendants, to-wit: Arizona Copper Company, Brown Canal

Company, Colvin-Jones Canal Company, Colvin-Jones Consolidated Ditch Company, Consolidated Canal Company, Curtis Canal Company, Dodge Canal Company, Double Circle Cattle Company, Fort Thomas Consolidated Canal Company, Fourness Canal Company, Graham Canal Company, Montezuma Consolidated Canal Company, Hawkins and Simms Milling and Irrigating Company, San Jose Canal Company, Smithville Canal Company, Smithville Extension Canal Company, Union Canal Company, and Ward and Courtney Dam Company are corporations doing business in Graham County in the District of Arizona.

(c) That certain others of said defendants, to-wit: Billingsley Extension Canal Company, Burtcher Ditch Company, Castlio Ditch, Colmenero Canal Company, Cosper-Wilson Canal Company, Cosper and Windham Canal Company, Duncan Canal Company, Frisco Placer Mining Company, Gold Bullion Mining Company, Greenhorn Irrigating Canal Company, Martin & Pearson Ditch, Martin & Pearson Irrigating Canal, Moddle Canal Company, Morenci Water Company, Shriver Ditch Company, Sunset Canal Company, Sunset Irrigating Canal Company, Valley Canal Company, White Mountain Lumber Company, York Canal Company, and York Cattle Company are corporations doing business in Greenlee County in said District of Arizona.

(d) That certain others of said defendants, to-wit: American Smelting and Refining Company, Arizona Hercules Copper Company, Aztec Mutual Canal Company, London Gila Mining Company and Phelps Dodge Corporation are corporations or associations authorized under the laws of the state of Arizona to do business in the District

of Arizona, having their principal places of business in the District of Arizona.

(e) That the defendant, the Nevada Consolidated Copper Company is a corporation duly organized under the laws of the State of Maine and authorized to do business in the District of Arizona.

(f) That certain others of said defendants, to-wit: Cosper-Windham Canal Company, Franklin Canal Company, Greenhorn Ditch Company, Nichols and Company, Sunset Canal Company, and Valley Canal Company are corporations doing business in the District of New Mexico, County of Hidalgo.

(g) That the Billingsley Canal Company, Black and McCleskey Canal, Rucker Ditch Company, Sexton Ditch Company, and Shriver Ditch Company are unincorporated canal companies engaged in the diversion and distribution of water from the Gila River for the irrigation of lands within the said Franklin Irrigation District.

(h) That certain others of said defendants, to-wit: A. Allen, A. A. Anderson, Mary A. Antanoil, State of Arizona, Estate of Walter A. Baitty, Homer H. Martin, Administrator, J. W. Baker, Henry Bamesberger, Ruth R. Barham, W. B. Barham, Estate of Thomas Barrett, Dan T. Peart, Administrator, Archie L. Bartlett, Pansey Kenower Bartlett, Madelene Bassler, Maude M. Bassler, Otis J. Baughn, Albert C. Becken, Grace R. Becken, Charles F. Bennett, George P. Bennett, Jarvus D. Bennett, J. M. Biddle, Estate of Paul C. Blackmore, Peter Corpstein, Administrator, Frances D. Blair, Clifton Bogard, C. D. Bradley, Ida M. Bradley, John R. Bradshaw, Ira S. Brayton, Esther A. Brockway, George M. Brockway, Marshall F. Brockway, Martha M. Brockway, Charlotte Hall Brown, Elizabeth

Brown, J. P. Brown, Estate of W. F. Brown, P. D. Overfield, Administrator, Sarah B. Brown, Thresa Hall Brown, John J. Buggs, George W. Burgess, Burris Brothers, John W. Burris, Lee Robinson Burris, L. B. Cadwell, Ella Carpenter, Fred E. Carpenter, Casa Grande Valley Bank, Louis Cathemer, Mike Celeya, Estate of W. B. Charlton, John E. Charlton, Administrator, Albert J. Christensen, Earl G. Clemans, Hazel H. Clemans, Mark Twain Clemans, W. J. Clemans, Jr., Winnefred W. Clemans, W. P. Clements, Mrs. Charles E. Cleveland, Inez H. Conrad, Thomas A. Crow, Jennie Davidson, John H. Dennison, Pearl Dennison, Robert Denton, Maurice Dodd, John Eastman, Tracy Eastman, Christobell G. Ellis, Joe Erny, Jose T. Espinosa, Jesus Espinosa, Feliz Brothers, Salvadore S. Feliz, Manuel S. Feliz, Pedro S. Feliz, Juan S. Feliz, Fidelity Savings & Loan Association, First National Bank of Florence, C. A. Fitzgerald, Town of Florence, J. J. Fraser, James D. Freeman, Lissa J. Fulton, May E. Furhack, Kathrina Gack, Estate of George F. Gallagher, Robert Denton, Administrator, L. D. Gamble, Richard B. George, Richard E. Geyler, M. L. Gilbert, John MacGregor Goodale, Nellie R. Gochenover, George F. Graham, Joseph Green, Virginia Griffin, Virginia Hales, Mattie M. Hall, Frank E. Hamilton, John Hamilton, A. T. Hammons, Rec., May Catlin Hansen, J. B. Harsha, Vernon W. Havins, A. W. Heath, Jacob Helfenstein, John Hendricks, W. E. Herron, Arthur Houser, Edith B. Jamieson, J. C. Jamieson, F. P. Jamieson, James C. Jayne, E. R. Johnson, John A. Johnson, Mary Johnson, Richard J. Jones, Julia R. Julian, Fred R. Kenower, Ola R. Kenower, H. B. Klingenberg, William C. Knight, Anna E. Kochsmeier, Frederick Kochsmeier, Henry Kochsmeier, Sr., Henry D. Kochsmeier, Sr., Maria Kochsmeier, Gustaf Kratzka, James J. Kruse, J. E. LaFleur, W. W. Lane, Dirk Lay,

Elizabeth L. Lay, Lola LeBaron, Louise LeBaron, Estate of Lola W. Lee, Dan T. Peart, Administrator, J. T. Lewis, David A. Little, Minnie Lobb, Lula O. Lockerd, Estate of W. H. Lonergan, T. A. Lonergan, Administrator, May H. MacBennett, A. L. McCann, Alpha E. McCann, Minnie M. McCann, James K. McCarty, Carrie McDowell, M. W. McDowell, Clara B. McFarland, Ernest W. McFarland, Gertrude B. McGee, Glen G. McKenzie, Elizabeth P. McMurray, Melanie Mandell, Rita Marquez, Ralph K. Marshall, Ivey Marshall, Joe Marta, David Omer Martin, Ben B. Mathews, Josiah J. Maxcy, R. D. Melick, Lillian C. Merchant, Martha M. Merrill, John B. Michia, R. M. Miller, J. L. Mills, Lillian I. Mitchell, Henry G. Moeller, Sidney B. Moeur, Fayette Moore, Ethel M. Moorehouse, H. W. Moorehouse, Rolland H. Moorehouse, Vashti B. Moorehouse, Margarete L. Murphy, J. S. Murry, L. S. Nafziger, M. N. Nafziger, S. W. Newman, C. H. Niemeyer, John O'Brian, Lillian O'Connor, Olive J. O'Connor, Lewis Olesen, Antonio S. Padilla, Florence Palamounter, Howard G. Palamounter, Lee Patrick, Roy F. Patrick, Harriet E. Pattee, George W. Pattee, Estate of Earl P. Patterson, Willie K. Pearson, W. J. Pennington, Amandus C. Peters, Addie Phillips, Margaret E. Pierce, Pinal Investment Company, Frank Pinkley, Ely E. Piper, W. M. Pollack, Grace P. Pottebaum, Robert H. Pottebaum, Estate of W. Y. Price, Mrs. W. Y. Price, Lloyd W. Prouty, W. Scott Prouty, Edwin Ralph, John Ralston, Margaret T. Randall, Henderson H. Raybourn, A. V. Read, Martin J. Reed, Fern M. Richardson, H. G. Richardson, Jennie Roberts, Ralph M. Rounds, Andris V. Salazar, Christiana Salazar, Estate of Elizabeth Schultz, William J. Schulze, Charles M. Schwab, Emma B. Schwarm, Clara C. Seagoe, George P. Sellers, Charles M. Shannon, Elizabeth Shannon, Mary L. Shannon, Walter Shayeb, Charles M. Sheafe, Helen S. Sheafe,

Mary S. Sheafe, James S. Sheafe, Chloren B. Shifflet, John Sigfrid, Carrie S. Sigler, George W. Sigler, J. OL. Simmons, Edward H. Sinclair, Charles R. Sligh, Earl F. Smiley, George W. Smith, Ole H. Smith, Southern Arizona Bank & Trust Company, Herbert G. Sparks, G. C. Springer, Mary E. Stevens, Dugald Stewart, T. V. Stokes, Walter W. Stovall, Tim Sullivan, Surety Abstract & Realty Company, J. C. Swan, Estate of John W. Sweeney, Sam Sweeney, Administrator, S. E. Tellyer, Phoebe C. Templeton, Frank A. Thackery, Estate of Della Tharp, Estate of James Tharp, Edward Tharp, Administrator, Augusta Thor, Fred Thor, H. D. Thornton, Mae Tiffiny, Mrs. Billie Treat, James R. Treat, Don A. Trekell, Louise M. Trekell, S. Louise Trekell, E. S. Turville, Mrs. A. C. Urban, F. A. Urban, Augustine Villar, Joe Villar, Valley Bank of Phoenix, Calbert Vance, Viola C. Vance, Ed G. Van Haren, Estate of Jose Vasquez, Charles F. Bennett, Administrator, Gregorio Vasquez, Bert Vidans, George P. Walker, Fannie Wallrich, A. A. Walsworth, Harry Ward, Roy S. Ward, C. E. Waterbury, Josie Waterbury, Katie E. Weaver, Adolphus Weyrick, Natalia M. White, W. G. Williams, Josephine H. Wills, Sophia Wind, Soren Yensen, and Elsie DeWolf Zellweger, are defendants with interest in common with the United States, plaintiff herein, by reason of contractual relations entered into by them with the said plaintiff, the United States of America, in the year 1919, and which agreement provided for the inclusion of certain lands within the hereafter mentioned Florence-Casa Grande Irrigation Project, the objects and intention of said agreement being more particularly hereinafter set forth in Paragraph 12 of this Bill of Complaint.

(i) That certain others of said defendants, to-wit: J. L. Aker, D. E. Barlow, J. R. Beavers, Florentino Billaba, C.

M. Brooks, R. W. Brooks, S. A. Brown, J. E. Cardon, W. L. Cauthen, H. G. Davidson, Bank of Duncan, Byron Echols, M. B. Echols, Joseph C. Elledge, W. F. Foster, Estate of Jasper Gale, Grivio Gonzales, H. Grady, M. L. Harris, C. F. Houlihan, M. J. Jensen, J. B. Johns, R. T. Johns, Delbert Johnson, D. L. Johnson, G. W. Johnson, F. W. Jones, John B. Jones, Mary Jane Jones, Parley P. Jones, T. V. Jones, Willard E. Jones, A. T. Layton, W. W. Lloyd, Anna H. Lunt, G. V. Lunt, Owen Lunt, P. L. Lunt, R. H. Lunt, M. J. McClaren, E. A. Merrill, Orson A. Merrill, Fenley F. Merrill, T. S. Merrill, James A. Mitchell, Arven Mortensen, Hans Mortensen, Hiram K. Mortensen, Joseph A. Mortensen, Peter Mortensen, T. J. Nations, Mrs. J. O. Pace, W. C. Pa[illegible]r, E. C. Payne, G. O. Payne, H. M. Payne, Junius E. Payne, Leslie B. Payne, C. Pirtel, R. Richardson, Frank Shriver, W. F. Shriver, Henry L. Smith, M. E. Stewart, S. Stewart, W. Plune Tibbets, Peter Wahlin, B. Y. Whipple and Mrs. T. M. Williamson are residents of Hidalgo County in the State of New Mexico.

(k) That as plaintiff is informed and believes and therefore alleges each and every of the defendants whose names are not mentioned above are citizens and residents of the State and District of Arizona.

5. That the Pima Indians, from time immemorial until the first reservation was made for them by the United States, as hereinafter described, occupied and possessed a large area of land on the Gila River in the State and District of Arizona, which area included the lands now embraced in the Gila River Indian Reservation. When the first White Men visited that region, they found these Indians irrigating from the Gila River extensive areas of said land, and raising large crops thereon. These Indians then numbered about as many persons as they do to-day,

which is approximately 5,000. They claimed a larger area along the Gila River than that now embraced in their reservation, but later agreed with the United States to accept their present boundaries. The land they occupied, including those comprising their present reservation, are arid and to produce crops require irrigation. The Indians at all times have held and now hold, under the Indian title of occupancy and possession, the lands now comprising the said reservation.

6. The Gila River is an innavigable stream which flows through the said reservation from east to west. With the lands of said reservation, the Pima Indians also did and do occupy and possess to a large extent the usufruct of the waters of the Gila River, and with said waters at all times have irrigated large areas of said lands. The waters thus possessed by said Indians are a quantity sufficient to irrigate the lands subsequently allotted to them as irrigable allotments, said allotments being made to individuals among said Indians and amount to 49,896 acres; and also enough water to irrigate such parts of said reservation as have come to be used for a school farm, agricultural experiment station, and for other administrative purposes. The areas of this latter character comprise approximately 650 acres. The waters so occupied amount to 632 second-feet running continuously throughout the year, but with a limitation for each year of 252,730 acre-feet of water. Suchwaters, to the extent that they have been used thus far for irrigation, have been diverted through numerous canals having their headings within said reservation, and they are now to be diverted through the same canals, and also by means of the Ashurst-Hayden dam, situate about ten miles above the town of Florence, Arizona, and the Sacaton dam, situate on said reservation. The priority of

the rights of said Indians and of the United States to said waters is of immemorial date.

7. The United States, on its acquisition from Mexico (by the Treaty of Guadalupe-Hidalgo and the Gadsden Purchase) of the territory within which are the lands occupied by the Pima Indians (and also those occupied by the Apache Indians, rights concerning which are hereinafter described), became and ever since has remained the guardian of the Indian inhabitants, including the said Pimas and Apaches, and became the owner of the soil of said territory (with the exception of that contained in certain Spanish and Mexican grants theretofore made, but not relevant here). The title of the United States to the lands thus acquired from Mexico also as just stated was encumbered by the aforesaid title of occupancy and possession of the Pima Indians and by a like title of the Apache Indians. The United States, upon such acquisition, furthermore became the full sovereign of said territory, having both national and municipal or state sovereignty; and it had plenary power over said lands and waters.

(a) There after, the United States, by a series of Acts of Congress, proclamations and executive orders, including the following: Act of February 28, 1859 (11 Stat. 501); Executive Orders of date August 31, 1876, January 10, 1879, June 14, 1879; May 5, 1882; November 15, 1883; May 2, 1911; July 31, 1911; December 16, 1911; June 2, 1913; August 27, 1914; March 18, 1915; and July 19, 1915, recognized that the lands and waters above described belonged to the Pima Indians under their title of occupancy and possession, and confirmed and made more secure those rights as far as they covered or related to said reservation, and reserved for said Indians the lands and

water rights comprised in or connected with the Gila River Indian Reservation. The lands in said reservation are situate in the Counties of Pinal and Maricopa, and comprise about 375,422 acres. The reservations thus made have been approved, ratified, confirmed, and recognized, and the purposes connected with them have been carried out by numerous Acts of Congress and proclamations and executive orders. Furthermore, the United States, ever since said Gila River Indian Reservation was established, has maintained thereon extensive schools, administrative offices and other facilities for carrying out the Federal Indian policy and for educating the Indians of said reservation and helping them to acquire the habits of civilized life.

(b) The water rights reserved in connection with the reservation of said land for the Pima Indians are alleged to be the following-to-wit: So much of the waters of the Gila River as should be needed to carry out the purposes of the United States in recognizing and in making said reservation of lands, and also in accomplishing the civilization and bringing about the prosperity of said Indians. The said rights amount to the same quantities of water as stated in the foregoing article 6, to-wit: 632 second-feet of the waters of said Gila River running continuously throughout the year but with a limitation for each year of 252,730 acre-feet of water. Said rights have an immemorial priority as set forth in Paragraph 6 as well as of the date of said first reservation, which was February 28, 1859.

8. The Pima Indians, from the time of the first knowledge of white man concerning them, and previous thereto, and before any appropriations or uses of waters of the Gila River by White Men, and until and including the present time, have irrigated with the waters of that river large

areas of the lands now included in their said reservation and allotments, and cultivated crops upon them, through various canals and ditches, many of which ditches are, and even in ancient times were, of large size. The lands so irrigated, as shown by surveys made in recent years, of present and past cultivated areas, amount to not less than 28,000 acres.

(a) The United States, therefore, is entitled to and claims on account of said Indians, as mere appropriators with an immemorial priority, the use of 350 second-feet of water, continuous flow, from said river, with a yearly limitation of one hundred forty thousand (140,000) acre-feet.

9. The Apache Indians, at a long time antedating the acquisition by the United States of the lands ceded as aforesaid by Mexico, occupied and possessed and owned, under the Indian title of occupancy and possession, subject only to whatever rights of a like nature their neighbors and enemies, the Pima Indians, had, a large area which included that now reserved to them by the establishment of their reservation known as the San Carlos Indian Reservation. This reservation is comprised of one million, eight hundred thirty-four thousand, two hundred forty (1,834,240) acres, and is situate in Gila and Graham Counties, in the state and District of Arizona.

(a) The said Apache Indians were hunting and war-making Indians, and were confined in the above-described area, which was smaller than that over which they formerly roamed and which they formerly claimed; said confinement was the result of wars and agreements, and the said reservation was made pursuant to the policy of the United States with regard to said Apache and other

Indians, of inducing them or compelling them to confine themselves to definite areas and of teaching them through agriculture and otherwise, to adopt the ways of civilized life. The aforesaid reservation for said Apache Indians was made as an addition to the White Mountain Reservation theretofore established, and the proclamations and executive orders creating it include the following dates:

> December 14, 1872; August 5, 1873; July 21, 1872; October 30, 1876; January 26, 1877; March 31, 1877; December 22, 1902; February 17, 1912.

(b) The Apache Indians above-mentioned, with other Indians admitted to share their rights with them, number some twenty-six hundred (2600) persons, some five hundred (500) of whom live upon the Gila River proper, while the rest live upon the Gila River proper, while the rest live upon the San Carlos River. These Indians are entitled by their rights of occupancy and possession and on account of the reservations thus made, to sufficient water for the irrigation of the lands deemed necessary for them to irrigate from the Gila River, excluding the San Carlos River, three thousand (3,000) acres of land, which lands are of a good agricultural character and are susceptible of irrigation from said stream and require irrigation to make them capable of producing crops. The amount of water to which the United States and the said Indians are entitled, on said account, is 37½ second-feet of continuous flow, with a limitation of fifteen thousand (15,000) acre-feet per year. The said water rights has a priority, antedating all priorities of white persons and as of the date when the Apache Indians first came to occupy said territory, which was before the United States or Mexico acquired sovereignty thereof, as well as a priority as of the date of said first reservation, which was December 14, 1872. Said

reservation was made at a time when the United States had both national and municipal sovereignty and plenary power with regard to the disposition of said lands and waters.

10. The Indians of said San Carlos Reservation irrigated with the waters of the Gila River, exclusive of the waters of the San Carlos River, through a number of ditches on their reservation aforesaid, from the year 1873 to the year 1900, and since, beginning with 100 acres and increasing to 2,500 acres of land in the year 1900, and on account thereof the United States is entitled, as a mere appropriator, to 32 second-feet of water, continuous flow, with a limitation of 12,800 acre-feet of water per annum, with priorities as of the dates of original and increased irrigation, and all prior to the year 1901.

11. From the time of the first establishment of the Gila River Indian Reservation as aforesaid, until the passage of the Act of Congress of May 18, 1916, described in the next Article hereof, the United States, in carrying out its policy with regard to the Indians of said reservation, did many things on and connected with said reservation to aid said Indians in irrigating their lands, and was supported therein by the individual and group efforts of the Indians themselves. Among said things have been the improvements of old Indian canals and the construction of new ones, including the building of the new San Tan Canal on the north side of the said river, through the Reclamation Service, in 1906, at an approximate cost of Five Hundred Thousand ($500,000.00) Dollars; the construction of the Sacaton Dam, which is just now being completed at a cost of approximately Seven Hundred Thousand ($700,000.00) Dollars; the improvement of the Little Gila Canal with laterals therefrom, a work accomplished under a number

of subordinate projects, among which are the Little Gila and Island Projects, under which was expended approximately Seventeen Thousand ($17,000.00) Dollars, and the Casa Blanca Canal Project, under which was expended about Twenty-five Thousand ($25,000) Dollars. The United States duly posed and recorded Notices of Appropriation in respect to each of said enterprises in conformity with State law. The work under said Projects has been and is being diligently prosecuted; the acts done under them have been for the purpose of irrigating all of the aforesaid allotments of the Indians of said reservation, or allotments which may be substituted therefor, except possibly a comparatively small number of such allotments comprising not more than 1,300 acres which can be irrigated best with water from the Salt River. Said acts were also for the purpose of irrigating the lands on said reservation utilized by the Government for administrative and agricultural experiment station purposes. Said areas aggregate approximately 650 acres.

(a) The aforesaid activities of the United States were undertaken and carried out in furtherance of the Indian occupancy and reservation rights hereinbefore set forth, and have been prosecuted with diligence. Said activities entitle the plaintiff to water rights and priorities as aforesaid of immemorial date as well as of the date of said first reservation, and as mere appropriations as of the dates of the posting of said Notices and the doing of said acts.

12. Under the Act of Congress of May 18, 1916, heretofore referred to, the United States, through the Secretary of the Interior, promptly settled water rights between all but a few of the White landowners and water users of the Florence-Casa Grande Valley and the United States on

account of the Pima Indians, and undertook and established the Florence-Casa Grande Project.

(a) The United States, in furtherance of said Project, supplementary to other rights therefor hereinabove set out, on May 22, 1916, duly gave notice of appropriation and reservation of waters of the Gila River for said Project by posting a notice at the site of the dam named below, and recording the same, and otherwise. The amount of water claimed under said notice was 2,000 second-feet.

(b) That Project contemplates the irrigation of at least 62,000 acres of land, with the idea that approximately 35,000 acres shall be Indian lands embraced in the allotments aforesaid and including the said administrative lands, and 27,000 acres of White lands in the Florence-Casa Grande Valley. The work in connection with said Project was promptly begun and has been diligently prosecuted from the time of its inception under said Act in 1916 and from the time of said notice, and is now being so prosecuted. The Ashurst Hayden diversion dam, which is one of the structures of said Project, was finished in the year 1922, and cost approximately Two Hundred Fifty Thousand ($250,000.00) Dollars. From that dam run the canals of the Project which take the water to the Indian and White distributing systems thereof. Sand canals have largely been completed, and to date have cost approximately Seven Hundred Fifty Thousand ($750,000.00) Dollars, and, together with said dam, are adequate to divert and in fact have a capacity of more than 1,000 second feet.

(c) Certain White persons, owners of the 27,000 acres of lands aforesaid which were taken into the Casa

Grande Project, by themselves and their predecessors in interest, by the posting of notices under the Territorial and State laws, by diligent construction of works, diversion and carriage of the waters of the Gila River to their lands and application thereof to beneficial use thereon, and acquired vested rights by appropriation to said waters as of various dates (as stated in the Lockwood Decree and Order of the Secretary of the Interior hereinafter referred to), which, in the aggregate, with certain 1915 priorities given under said Project, amounted to 337.5 second-feet with a limitation of 135,000 acre-feet per annum, and granted and conveyed the same to the United States for use in connection with said Project at or about the time of the above-mentioned settlement of rights therefor. Descriptions of the several tracts of land supplied by the aforesaid rights, and descriptions of said rights and their respective extents and the priorities thereof are contained in the Order of the Secretary of the Interior made April 22, 1920, designating the White lands to be included in the Florence-Casa Grande Project, and in the original and supplemental decree of the Superior court of Pinal County, Arizona, made in the case of Lobb v. Avenente, et al, and commonly called "the Lockwood Decree."

The Acres and Priorities fixed in said Order as follows:

No. Acres	Priority	No. Acres	Priority
36	1868	40	1869
156	1869	20	1869
95	1869	40	1869
20	1868	40	1869
20	1868	40	1869
40	1868	60	1869
80	1868	8	1869

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368	1868	15	1869
10	1868	40	1869
54	1868	80	1869
78	1868	160	1859
63.33	1868	40	1869
		40	1869
43.33	1869	8	1869
5	1869	40	1869
19.13	1869		
55.87	1869	5	1872
20	1869	20	1872
20	1872	80	1892
140	1872	20	"
17	1872	20	"
80	1873	6	1893
80	"	160	1893
		160	"
17	1874		
		10	1894
160	1875	10	"
149	"	15	"
		40	"
80	1876	65	"
20	1876	12	1894
40	"	40	"
35	"		
		11	1895
20	1877	50	"
40	"	60	"
26.66	"	20	"
20	"	15	"
53.33	"	15	"
		10	"
30	1878	80	"
		80	"
40	1879	8	"
10	"	5	"
40	"	35.29	"

40	"	39.71	"
80	"	10.29	"
		10.44	"
37	1880	113	"
		7	"
26.66	1884	80	"
		50	"
24	1886	0.57	1895
70	1889	20.	1896
80	1889	20	1896
25	"	25	"
30	"	10	"
		20	"
3	1890	80	"
20	1890	95	"
40	"	40	"
80	"		
		4.21	1898
12	1891	4.01	"
120	"	20	"
120	"	10	"
16	"		
80	"	5	1899
40	"		
160	"	40	1901
230	"		
6	"	45	1904
30	"		
160	"	80	1908
		40	1908
40	1892	80	"
80	"	230	"
160	"	Priorities Grouped as of	
50	1909	2	Jan. 2, 1915.
40	"	30	"
20	"	43	"
120	"	60–	"
40	"	40	"

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		40	"
3	1910	40	"
15	"	160	"
34	"	160	"
80	"	44	"
		103	"
160	1911	40	"
		20	"
60	1912	80	"
80	"	50	"
		77	"
20	1913	90	"
160	"	20	"
160	"	80	"
150	"	15	"
80	"	30	"
80	"	35	"
400	"	30	"
160	"	20	"
30	1914	40	"
70	"	45	"
160	"	44	"
60	"	10	"
25	"	5	"
150	"	20	"
160	"	5	"
160	"	23	"
12	"	20	"
		20	"
Priorities Grouped		30	"
as of Jan. 1, 1915		30	"
320	"	30	"
56	"	50	"
53.34	"	40	"
10	"	5	"
9.5	"	20	"
4	"	25	"
80	"	125	"

40	"	35	"
56	"	20	"
97	Jan. 1, 1915	20	Jan. 2, 1915
40	"	10	"
2	"	30	"
16.33	"	30	"
10	"	40	"
20	"	160	"
25	"	10	"
5	"	20	"
35	"	40	"
10	"	10	"
20	Jan. 2, 1915	5.5	Jan. 3, 1915
5	"	90	"
12	"	10	"
		63	"
5	Jan. 3, 1915	70.2	"
80	"	160	"
60	"	10	"
320	"	5.82	"
320	"	8	"
160	"	40	"
160	"	10	"
640	"	40	"
320	"	80	"
80	"	28	"
160	"	14	"
160	"	23.11	"
60	"	10	"
160	"	300	"
160	"	10	"
80	"	160	"
120	"	480	"
80	"	640	"
160	"	60	"
320	"	160	"
5	"	160	"
55	"	80	"

60	"	160	"
20	"	40	"
160	"	160	"
160	"	160	"
40	"	160	"
33	"	160	"
50	"	120	"
35	"	20	"
15	"	40	"
80	"	160	"
160	"	39.92	"
43.2	"	160	"
145	"	80	"
40	"	74.96	"
35	"	80½	"
20	"	80	"
320	"	150	"
40	"	158.4	"
20	"	160	"
18	"	36.61	"
10	"	160	"
260	"	160	"
240	"	320	"
160	"	80	"
1.08	"	160	"
20	"	160	"
160	"	120	"
30.2	"	157	"
40	"	40	"
125	"	160	"
360	"	320	"
20	"	80	"
80	"	40	"
160	"	240	"
20	"	40	"

TOTAL 27,000 ACRES.

Descriptions of the several tracts of land covered by the aforesaid rights are set forth in the Order of the Secretary of the Interior made April 22, 1920, designating the White lands to be included in the Florence-Gasa Grande Project.

(d) Also, at that time, there were conveyed to the United States, in connection with and f use upon said Project, many inchoate water rights owned by said White persons and others connected with them and acquired in the manner aforesaid. Said rights include those initiated and claimed by the Casa Grande Valley Water Users' Association, which Association partly constructed a large canal which was later purchased and taken over by the United States, at a cost of Fifty Thousand ($50,000.00) Dollars, and is now in process of completion by the United States as one of the main canals of said Project. Said Association spent in the construction of said canal upwards of Eighty Thousand ($80,000.00) Dollars.

The United States claims, on account of said reservation and as a mere appropriation, for said Project, 775 second-feet of water, continuous flow, with a limitation of 310,000 acre-feet per year, with a priority as of the date of the passage of said act, which was May 18, 1916, as well as of the date of the posting of said notice, which was May 28, 1916; and claims on account of said conveyed vested rights of White personsm337.5 second-feet of water, continuous flow, with a right of storage in the Picacho Reservoir, and with a limitation of 135,000 acre-feet per annum, with priorities as in said order mentioned.

13. The United States, before the year 1896, and before the passage of the Reclamation Act (Act of June 17, 1902,

32 Stat. 388), made examinations of the water resources of a considerable part of the United States, through the Geological Survey, in anticipation of the adoption by the United States of the so-called Reclamation Policy. Among the water resources examined were those of the Gila River, and the fact, which even at that time had long been known, was by such examinations confirmed, that the so-called San Carlos Reservoir Site was the most important site for a reservoir on the Gila River, and one of the most important sites for an irrigation reservoir anywhere in the southwestern part of the United States,

(a) The United States, by such investigations and the appropriations of Congress authorizing and supporting them, initiated at that time, which was prior to 1900, the so-called San Carlos Project. The site for the dam and the site for the reservoir of said Project are situated on the aforementioned San Carlos Indian Reservation, which Reservation, as before stated, was set aside for the Apache Indians on December 14, 1872. From the earliest days of the consideration of the San Carlos Project, the United States set apart, protected and reserved the said dam and reservoir sites for the purposes of said Project, and thenceforward, by numerous Acts of Congress and acts of the executive branch, refused to permit encroachments upon said sites, and preserved the same for the purposes of said Project.

(b) The United States, in further carrying out the San Carlos Project, so constructed and organized its Florence-Casa Grande Project, hereinbefore described (all of the lands of which are expected to be included in the San Carlos Project), as to make it suitable for utilization in connection with the San Carlos Project. The United States, in still further carrying out and protecting said

San Carlos Project, and in order to preserve from encroachments the waters necessary therefor, and to make the waters of the Gila River, not theretofore appropriated by and vested in others, available for irrigation of the lands of said Project, whether said lands should be below or above the said proposed Coolidge Reservoir, reserved, among other things, dam and reservoir sites upon the Gila River, by executive orders as follows: January 18, 1906; December 18, 1909; March 1, 1912; March 18, 1915; February 1, 1917; March 21, 1917; March 15, 1920; May 25, 1920; October 23, 1924; and November 22, 1924.

(c) By the Act of June 7, 1924, entitled "An Act for the continuance of Construction Work on the San Carlos Federal Irrigation Project in Arizona" (which is the San Carlos Project heretofore referred to (43 Stat. 475, 476) "and for Other Purposes", the Secretary of the Interior is authorized to construct, under a limit of cost of Five Million, Five Hundred Thousand ($5,500,000.00) Dollars, a dam at the said San Carlos reservoir site, and to create said reservoir; and pursuant to said Act, work is being diligently prosecuted to complete said project.

(d) It is contemplated that said Project will irrigate: (1) the irrigable allotments (each of which embraces ten irrigable acres) made to the Indians of the Gila River Indian Reservation and now held by them under trust patents, or any other allotments which may in individual cases be substituted therefor, together with the administrative areas above alleged; (2) the 27,000 acres of White lands now embraced in the Florence-Casa Grande Project; (3) such a quantity of White lands as, with the foregoing Indian and White lands, will make up one hundred thousand acres, and (4) such additional lands as it shall be found feasible to irrigate as a part of said Project.

(e) The said Reservoir, by the Act of Congress of June 7, 1924, (43 Stat. at Large, 475, 476), as planned for and being built, has been named the "Coolidge Reservoir" and will have a capacity of 1,285,000 acre-feet of water; and, in order to give proper service and make economical use of the water resources of the said Gila River and of the resources of said reservoir, it will have to be filled and kept filled by the waters of said river as often as the yield of said river permits, and said waters as thus stored are and will be necessary for the proper irrigation of the lands included within said Project as above described.

(f) The United States, by undertaking said San Carlos Project, as aforesaid, and by steps made in connection therewith, has reserved and appropriated of the waters of the Gila River sufficient water to fill and keep full said reservoir, as aforesaid, with a priority as of not later than the year 1896. The United States has also, by said acts, reserved and appropriated whatever water, if any, may be necessary from the Gila River, to be diverted at the Ashurst-Hayden dam and the Sacaton Dam for the irrigation of lands lying below said points of diversion which will be included in said Project.

14. By reason of the things hereinabove set forth, the United States has reserved and appropriated, acquired and owns, and is entitled to use for said Indian reservations, the Florence-Casa Grande Project and the San Carlos Project, in the waters of the Gila River, the rights hereabove enumerated, the same being briefly stated as follows:

(a) 632 second-feet of water, with a limitation of 252,730 acre-feet per annum, with a priority of immemorial date, as well as of February 28, 1859, and 350 second-feet with a yearly limitation of

140,000 acre-feet with a priority of immemorial date, to be diverted on the Gila River, but not below the West line of the Gila River Indian Reservation, now reserved as claimed under Articles 5, 6, 7, 8, and 9 hereof, the first figures above-named representing the total diversion under these priorities.

(b) 37½ second-feet of water with a limitation of 15,000 acre-feet per annum, and 32 second-feet with a yearly limitation of 12,000 acres-feet, to be diverted by ditches serving the San Carlos Reservation lands or any lands which may be substituted therefor, or to be stored as claimed in Articles 9 and 10 hereof, with priorities, respectively, as of the year 1846, when the United States obtained sovereignty over that territory, as well as of December 14, 1872, when said San Carlos Reservation was made, and as of the dates from 1873 to 1901, stated in Article 10; the figures first above named representing the total diversion under these priorities.

(c) 775 second-feet of water, with a limitation of 310,000 acre-feet per annum, and 337.5 second-feet with a yearly limitation of 135,000 acre-feet, to be diverted at the Ashurst-Hayden dam and the Sacaton Dam, and at intermediate places on said river, as claimed in Article 11 hereof, with priorities, respectively, of May 18, 1916, as well as of May 22, 1916, and as in the Lockwood Decree and Order of the Secretary of the Interior fixed, as mentioned in Article 12 hereof; the first above-named figures representing the total diversion under the priorities.

(d) Sufficient water to fill and keep filled each year the Coolidge Reservoir aforesaid, which has a capacity of 1,285,000 acre-feet, with a priority

not later than the year 1896, and water directly diverted from the natural flow of said Gila River, as claimed in Article 13 hereof.

15. Each of the defendants, except those who have by contracts devoted their water rights to the said Florence-Casa Grande Project, and the San Carlos Project, and so are interested on the side of the United States in this action, as above set forth, claims some right to divert water from the Gila River as it flows between a line 10 miles east of the parallel to the dividing line between Arizona and New Mexico, and the confluence of the Salt River with the Gila River, and after the following tributaries of the Gila River, the San Francisco River, and the San Carlos River, the San Pedro River, and the Santa Crus River, respectively, have joined, the main stream, and all but a few of said diversions being in the District of Arizona; or the said defendants claim some right to store the water of said river, or of some tributary thereof, either within or above the stretch of the same as just described. The United States has no knowledge or means of knowledge of the exact nature of the claims of the defendants to rights in or the use of said water, but such claimed rights, so far as the United States has knowledge thereof, are numerous, intricate and various, and are conflicting with and adverse to the rights of the United States as hereinabove set forth; and the rights claimed by the defendants, if exercised, would, and when exercised do, diminish the volume of water in said river so as to deprive the United Stets of the amount of water to which it is entitled.

(a) Until the rights of the various claimants, parties hereto, including the United States, to divert and use the waters flowing in said river within the area above defined, or to store such water above, with the extent, nature and

priority of such rights, have been judicially determined, the United States can not properly protect its rights to said waters; and to protect them otherwise than is herein sought, if they could be so protected, would necessitate a multitude of suits.

WHEREFORE THE UNITED STATES PRAYS:

First: That the writ of subpoena issue to each and all of said defendants, and that they be required to answer this complaint and set up fully their claims to the waters of said river within the areas above defined.

Second: That the Court, by its decree, determine the rights of the parties hereto to the waters of said river and its tributaries and the rights of said parties to divert water from said river within the area aforesaid and for storage above, to the end that it may be known how much of said waters may be diverted from said river by the parties hereto and for what purposes, where, by what means of diversion and with what priorities.

Third: That the Court decree to the United States the water rights hereinabove set forth as owned and claimed by the United States, and quiet its title therein, and enjoin said defendants and each of them from interfering therewith, and provide also such means for the carrying out of its decree herein as may be proper.

Fourth: That the United States recover its costs herein and have such other, further and different relief as to the Court may seem just.

And Plaintiff will every pray.

John G. Sargent
The Attorney General of
the United States

By /s/ Edward A. Smith
Special Assistant to the
Attorney General.

Supreme Court, U.S.
FILED
DEC - 8 2006
OFFICE OF THE CLERK

Nos. 06-173 and 06-333

In the Supreme Court of the United States

SAN CARLOS APACHE TRIBE, PETITIONER

v.

STATE OF ARIZONA, ET AL.

PHELPS DODGE CORPORATION,
CONDITIONAL CROSS-PETITIONER

v.

SAN CARLOS APACHE TRIBE, ET AL.

ON PETITION AND CONDITIONAL CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

In a general stream adjudication, the Arizona Supreme Court held that the San Carlos Apache Tribe and the United States on the Tribe's behalf are precluded, under res judicata, from asserting rights to the Gila River mainstem beyond those awarded in the 1935 Globe Equity Decree, but that the Decree does not likewise preclude claims to Gila River tributaries. The court also held that the Tribe may not assert, in the state-court general adjudication, a defense to res judicata based on the United States' alleged inadequate representation of the Tribe in the Globe Equity proceedings, because any collateral challenge to the Decree must be brought in the federal court that entered the Decree.

The question presented in the Tribe's petition in No. 06-173 is whether the Arizona Supreme Court erred in declining to hear, on comity grounds, the Tribe's res judicata defense.

The question presented in the conditional cross-petition in No. 06-333 is whether the Arizona Supreme Court erred in holding that the Globe Equity Decree is limited to claims on the Gila River mainstem, as opposed to its tributaries.

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the Arizona Supreme Court (Pet. App. 1a-53a) is reported at 127 P.3d 882. The Arizona Supreme Court's order denying reconsideration (Pet. App. 54a-61a) is reported at 134 P.3d 375.

JURISDICTION

The opinion of the Arizona Supreme Court was entered on February 9, 2006. The Arizona Supreme Court

denied reconsideration on May 3, 2006 (Pet. App. 54a-61a). A petition for a writ of certiorari was filed on August 1, 2006. A conditional cross-petition for a writ of certiorari was filed on September 5, 2006. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a).

STATEMENT

1. The Gila River originates in the mountains of New Mexico and flows west across Arizona, eventually meeting the Colorado River (when flows are sufficient) at the Arizona-California border. The most significant project on the river is the San Carlos Federal Irrigation Project, which includes the Coolidge Dam and San Carlos Reservoir, a massive reservoir designed to store flood waters for downstream irrigation. See generally *Gila River Pima-Maricopa Indian Cmty.* v. *United States*, 684 F.2d 852, 859 (Ct. Cl. 1982). The United States constructed the Coolidge Dam and San Carlos Reservoir on land within the San Carlos Apache Reservation. See generally S. Rep. No. 133, 102d Cong., 1st Sess. 5 (1991).

In October 1925, the United States filed an action in federal district court in Globe, Arizona (styled "Globe Equity No. 59") to secure water rights for the project and associated Indian reservations. See OSM No. 293.[1] The United States asserted various rights on behalf of the Indians of the Gila River Indian Reservation, *id.* at 4-6, the Indians of the San Carlos Apache Reservation, *id.* at 6-7, and non-Indian owners of relevant lands, *id.* at 7-19. The United States named as defendants the Gila Valley Irrigation District and numerous canal companies and individuals with claims to the "Gila River and

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[1] The parties filed thousands of documents with the Office of the Special Master (OSM). See Pet. App. 113a. Each document was assigned an "OSM No." See *id.* at 117a n.6.

its tributaries in the District of Arizona and in the District of New Mexico." *Id.* at 3-4, 21-22.

The United States asserted that it "reserved and appropriated" and was "entitled to use * * * for said San Carlos irrigation project and * * * on said Indian Reservations * * * all of the waters of the said Gila River and its tributaries." OSM No. 293, at 21. With respect to petitioner, the San Carlos Apache Tribe, the complaint stated that the Tribe had appropriated "waters of the Gila River and its tributary * * * the San Carlos river." *Id.* at 6-7. The United States prayed, *inter alia*, for a "decree determin[ing] the relative rights of the parties hereto * * * to and of the waters of the said Gila River and its tributaries." *Id.* at 23.

In 1927, the United States filed an amended complaint narrowing the scope of the adjudication. See OSM No. 346. The United States no longer asserted claims to the "Gila River and its tributaries," OSM No. 293, at 3-4, but instead asserted claims "in the waters of the Gila River" alone. OSM No. 346, at 31. And while the original complaint asserted the United States' rights against a class of defendants with claims to the Gila River or its tributaries, the amended complaint asserted the United States' rights against a class of defendants with claims to "the Gila River" alone, between various points. *Id.* at 32-33.

In amending its claims on behalf of the Apache Indians, the United States likewise withdrew claims to tributaries. The amended complaint asserted that the Apaches were entitled "to sufficient water for the irrigation of the lands deemed necessary for them to irrigate from the Gila river, excluding the San Carlos River." OSM No. 346, at 21; see *id.* at 21-22.

The parties to Globe Equity No. 59 entered into a consent decree (the Globe Equity Decree) in 1935. Pet. App. Supp. 103-225; see OSM No. 4. The Decree recognizes the dismissal, "without prejudice," of numerous parties determined to have "claims and rights, if any, * * * outside the scope of [the adjudication] as outlined and defined in the amended complaint." Pet. App. Supp. 121; see OSM No. 4, at 9. Among the parties so dismissed without prejudice was conditional cross-petitioner Phelps Dodge. *Ibid.*; see OSM No. 469.

As among parties not dismissed, the Decree contains a schedule of rights and priorities. Pet. Supp. App. 124-198. Among other things, the Decree grants the United States the right to divert, from the Gila River, 210,000 acre feet per year to irrigate up to 35,000 acres of "irrigable Indian allotments" on the Gila River Indian Reservation. The Decree also established the United States' right "to store the waters of the Gila River in the San Carlos Reservoir" for the reclamation of approximately 100,000 acres of land below the reservoir. *Id.* at 210, 217.

With respect to the Apache Indians, the Decree established the United States' right to divert 6000 acre feet per year from the Gila River for the "reclamation and irrigation" of 1000 acres of irrigable land. Pet. Supp. App. 198. The Decree concludes by stating that the parties are "forever enjoined and restrained from asserting or claiming" against each other "any right, title or interest in or to the waters of the Gila River" except the rights specified in the Decree. *Id.* at 225.

2. In the mid-1970s, various water-rights claimants filed actions in Arizona state court to resolve conflicting claims. See *Arizona* v. *San Carlos Apache Tribe*, 463 U.S. 545, 557-558 (1983). Those proceedings evolved

into the present general stream adjudication to determine all rights in the Gila River system. *Ibid.* The United States was joined as a defendant under the McCarran Amendment, 43 U.S.C. 666. The United States filed numerous claims on its own behalf and on behalf of Indians on federal reservations. On behalf of petitioner, the United States asserted rights to divert water from the Gila River, the San Carlos River, and various other waters. Pet. Supp. App. 82, 88-90. Petitioner separately filed similar claims on its own behalf. *Id.* at 42, 47-49.[2]

Before filing claims in the state-court general adjudication, petitioner and other Indian Tribes filed suit in federal district court, seeking removal of the Indian water claims to federal district court and an independent determination of their claims in federal court. *San Carlos,* 463 U.S. at 558. In 1983, this Court held that, in deference to Arizona's general stream adjudication, the federal courts should abstain from adjudicating water rights covered by the state-court adjudication. See *id.* at 569-570. On remand, the Ninth Circuit stayed the federal-court actions brought by petitioner and other Tribes. *Northern Cheyenne Tribe* v. *Adsit*, 721 F.2d 1187, 1189 (1983).

In 1990, petitioner intervened in the federal-court Globe Equity proceedings, in which the court that entered the consent decree in 1935 continues to interpret and enforce the Decree. Pet. App. 44a, 46a. In doing so, petitioner noted that it did not "seek to litigate rights to additional Gila River water in this matter." *Id.* at 44a.

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[2] In asserting rights to the Gila River mainstem, the United States acknowledged that such claims were subject to a ruling on the preclusive effect of the Globe Equity Decree. See Pet. Supp. App. 82; Statement of Claimant No. 39-64,259.

In 1995, the Arizona legislature requested that the state-court Gila River litigation grant early consideration to claims associated with Indian reservations and other federal lands, in order to reduce the cost and complexity of the adjudication. See H.B. 2276, 42d Legis., 1st Sess. § 24(C) (Ariz. 1995). In accord with that request, the trial court directed interested parties to file summary judgment motions, as appropriate, raising preclusion arguments concerning Indian claims. See Pet. App. 112a-115a.

A special master determined that the Globe Equity Decree should be accorded preclusive effect as to claims asserted by or on behalf of the Gila River Indian Community, but that the Decree was limited in scope to the Gila River mainstem, not its tributaries. Pet. App. 145a-147a, 160a-164a, 179a. The trial court affirmed, *id.* at 90a, and held that its preclusion ruling applied to petitioner to the same extent that it applied to the Gila River Indian Community, *id.* at 64a.

3. On interlocutory appeal, the Arizona Supreme Court affirmed the determinations discussed above. Pet. App. 1a-53a. The court noted that res judicata generally prevents re-litigation of the same cause of action, and it assumed without deciding that whether two claims are part of the same cause of action turns on whether they comprise part of the same transaction. *Id.* at 13a-15a. Under that test, the court observed, "claims to the Gila River mainstem asserted by the United States in the Globe Equity litigation would not seem to be part of the same 'transaction' as its claim to the tributaries," in part because the mainstem and tributaries are "spatially distinct." *Id.* at 15a.

The Arizona Supreme Court rested its decision, however, on the different ground that "parties to a consent

decree can agree to limit the decree's preclusive effects" by agreeing "in terms or in effect" to that outcome. Pet. App. 16a (quoting Restatement (Second) of Judgments § 26(1)(a) (1982) (Restatement)). The court concluded that the parties to the Globe Equity Decree so agreed because the Decree "adjudicated only claims to the Gila River mainstem and not to its tributaries." *Id.* at 26a. As support, the court explained that the United States' amended complaint omitted the claims that its original complaint had asserted to the tributaries; the United States dismissed without prejudice all defendants who claimed water solely from the tributaries; and the Decree itself grants rights only as to the Gila River, not the tributaries. *Id.* at 19a-23a.

The Arizona Supreme Court declined, however, to address petitioner's argument that it was not bound by the Globe Equity Decree at all because the United States allegedly represented petitioner inadequately in the Globe Equity proceedings (to which petitioner was not a named party). Pet. App. 36a-47a. While observing that this Court "has twice rejected similar arguments in [analogous] cases," *id.* at 39a (citing *Nevada* v. *United States*, 463 U.S. 110, 135 (1983); *Arizona* v. *California*, 460 U.S. 605, 626, 628 n. 21 (1983)), the Arizona Supreme Court determined that it need not decide whether this case is "factually distinguishable" from those cases, because the "doctrine of comity compels" the court to "refrain from addressing the Tribe's arguments," *id.* at 40a.

The Arizona Supreme Court reasoned that "a court should not assume to disturb another court's disposition of a controversy unless there are good reasons for doing so." Pet. App. 42a (quoting Restatement § 78 cmt. a). Because petitioner intervened in the Globe Equity pro-

ceedings for purposes other than challenging the United States' representation, the court found it clear that petitioner had "consciously declined to adjudicate its 'inadequate representation' claim in the forum responsible for issuing, interpreting, and enforcing the Decree." *Id.* at 44a. Under those circumstances, the Arizona Supreme Court concluded, "[n]otions of comity would be seriously undermined if [it] were to permit the Tribe to assert [in the state court proceedings] the very arguments * * * that it has explicitly pretermitted in the federal court." *Ibid.* In any event, the court opined, the federal court likely "would not entertain an attack on the Decree * * * because of untimeliness." *Id.* at 46a.

4. In a motion for reconsideration, petitioner argued that it had sought to litigate its water rights in federal district court, but that those proceedings were stayed (under abstention grounds) by the rulings of this Court and the Ninth Circuit in *San Carlos*, *supra*, and *Adsit*, *supra*. In denying rehearing, the Arizona Supreme Court stated that the federal courts stayed only petitioner's independent federal-court action, not any post-judgment proceedings in the Globe Equity litigation, and thus did not deprive petitioner of the ability to seek relief from the Decree in the latter proceeding. Pet. App. 60a.

ARGUMENT

This Court's review is not warranted. The Arizona Supreme Court's comity holding is wrong, but that holding does not conflict with decisions of other appellate courts, and the issue is not likely to recur frequently. Moreover, even if the comity holding were reversed, petitioner could ultimately prevail on the inadequate-representation issue it seeks to raise in these proceed-

ings only by establishing a valid defense to the res judicata effect of the Globe Equity Decree, and petitioner would have to overcome significant obstacles to do so. With respect to the conditional cross-petition, the Arizona Supreme Court's interpretation of the Globe Equity Decree is correct and does not conflict with any other appellate decisions.

1. Although the Arizona Supreme Court's decision is interlocutory, this Court has jurisdiction to consider the petition under 28 U.S.C. 1257(a) because "the federal issue, finally decided by the highest court in the State, will survive and require decision regardless of the outcome of future state-court proceedings." *Cox Broad. Corp.* v. *Cohn*, 420 U.S. 469, 480 (1975). The state supreme court conclusively determined that "the Globe Equity Decree precludes the Apache Tribe and the United States on the Tribe's behalf from asserting claims to water from the mainstem of the Gila River beyond those rights granted in the Decree," and that, on grounds of comity, it would not address the Tribe's argument that the Decree should not be given preclusive effect. Pet. App. 52a. Thus, while the state courts will undertake further proceedings concerning other claims to the relevant waters, the Arizona Supreme Court finally decided petitioner's claims to the mainstem.

Moreover, a general stream adjudication is a paradigmatic case for application of the *Cox Broadcasting* rule quoted above, because a state court can spend decades resolving thousands of different claims to water rights along a particular water body. This case has been pending for over two decades. See pp. 4-5, *supra*. It would make little sense for this Court to defer review of one claim or issue until all others are resolved, potentially several decades later. That course could prejudice

all parties to the adjudication if this Court ultimately upset decades of litigation by overturning an initial determination.

Jurisdiction over the conditional cross-petition is a closer question. While the Arizona Supreme Court finally determined that res judicata does not bar petitioner's claims to tributaries of the Gila River, see Pet. App. 52a, further litigation will be necessary to determine which, if any, of those claims are valid. Nonetheless, this Court has jurisdiction under 28 U.S.C. 1257(a) over the narrow category of cases where "the federal issue has been finally decided in the state courts with further proceedings pending in which the party seeking review here might prevail on the merits on nonfederal grounds," and "a refusal immediately to review the state-court decision might seriously erode federal policy." *Cox*, 420 U.S. at 482-483.

If this Court were to grant the petition, and were to consider the conditional cross-petition worthy of its review, it would make little sense to resolve only one of the two res judicata issues at this time, and require the parties and the state courts to undertake lengthy litigation of the tributary claims before learning whether, in this Court's view, those claims are precluded by res judicata. Especially because this Court would already be reviewing this case at this time, and general stream adjudications can be exceptionally lengthy, "immediate rather than delayed review would be the best way to avoid 'the mischief of economic waste and of delayed justice,'" while also reducing the disruption to state proceedings—if the petition and conditional cross-petition otherwise warranted this Court's review. *Cox*, 420 U.S. at 477-478 (quoting *Radio Station WOW, Inc.* v. *Johnson*, 326 U.S. 120, 124 (1945)).

2. Under this Court's demanding certiorari criteria, however, the petition and cross-petition do not warrant further review. Petitioner does not challenge the Arizona Supreme Court's ruling that the Globe Equity Decree adjudicated petitioner's rights to water from the Gila River mainstem. Rather, petitioner asks (Pet. 16-30) this Court to review the Arizona Supreme Court's decision not to consider its inadequate-representation defense to claim preclusion.

a. Petitioner correctly explains (Pet. 16-23) that the Arizona Supreme Court erred in declining to consider petitioner's defense based on principles of comity. In other contexts, a state court's decision to defer to a federal court on the effect of the federal court's prior judgment might be appropriate, or at least not contrary to *federal* law.

In this unusual context, however, this Court directed the federal courts to abstain from adjudicating water rights covered by the State's general stream adjudication. See *Arizona* v. *San Carlos Apache Tribe*, 463 U.S. 545, 565-570 & n. 21 (1983). This Court explained that "concurrent federal proceedings are likely to be duplicative and wasteful, generating 'additional litigation through permitting inconsistent dispositions of property.'" *Id.* at 567 (quoting *Colorado River Water Conservation Dist.* v. *United States*, 424 U.S. 800, 819 (1976)). In doing so, the Court emphasized that the Arizona courts had a "solemn obligation to follow federal law" in adjudicating petitioner's water rights. *Id.* at 571. As part of that adjudication, the Arizona courts could properly resolve the question whether petitioner has a valid federal-law ground for overcoming the res judicata defense raised by other parties in this general stream adjudication. It makes little sense for the state

courts to decline to consider an issue of federal law out of comity to the federal courts when the federal courts have already abstained in deference to the state courts—especially when this Court has so directed and emphasized the state courts' obligation to follow federal law.

Although the Arizona Supreme Court suggested that Federal Rule of Civil Procedure 60(b) might prevent it from reaching the inadequate-representation question, the court correctly declined to rely on that ground. Pet. App. 41a-42a. Rule 60 provides a mechanism for a party to seek relief from a federal-court judgment by motion in the original proceeding, but "does not limit the power of a court to entertain an independent action to relieve a party from a judgment." Fed. R. Civ. P. 60(b). Here, petitioner seeks to assert water rights in this "independent action" by asserting affirmative claims to water, and it is asserting an inadequate-representation ground for overcoming the res judicata defense advanced by other parties.

The Arizona Supreme Court noted that the federal court that issued the Globe Equity Decree retained jurisdiction over the Decree, and petitioner intervened in that action in 1990 for purposes other than challenging the adequacy of the United States' representation. Pet. App. 44a. By that time, however, this Court had already held, in 1983, that the federal courts should abstain from adjudicating the water rights at issue in this Arizona general stream adjudication, *San Carlos*, 463 U.S. at 569-570, and the Ninth Circuit had therefore stayed petitioner's independent federal-court action, *Northern Cheyenne Tribe* v. *Adsit*, 721 F.2d 1187, 1189 (1983). While petitioner was free to defend its *existing* rights under the Globe Equity Decree in the court that entered

the Decree, this Court's *San Carlos* decision permitted petitioner to claim *additional* rights only in this state-court litigation. The Arizona Supreme Court therefore erred in holding that petitioner had voluntarily "declined to adjudicate its 'inadequate representation' claim" in the Globe Equity court. Pet. App. 44a.

The cases cited by the Arizona Supreme Court are not to the contrary. See Pet. App. 42a-43a. All of those cases conditioned their comity holdings on the availability of relief in an alternative forum. See *Feller* v. *Brock*, 802 F.2d 722, 728 (4th Cir. 1986); *Treadaway* v. *Academy of Motion Picture Arts & Scis.*, 783 F.2d 1418, 1421 (9th Cir. 1986); *Lapin* v. *Shulton, Inc.*, 333 F.2d 169, 172 (9th Cir.), cert. denied, 379 U.S. 904 (1964). Here, in contrast, relief is not available to petitioner in federal court under this Court's *San Carlos* decision.

b. Nonetheless, this case does not warrant this Court's review. The Arizona Supreme Court's decision does not directly conflict with this Court's decision in *San Carlos* because the latter decision did not address the question whether petitioner could request the federal court in the Globe Equity proceedings to determine the effect of its own prior decree for purposes of deciding whether petitioner then would be free under federal law to seek additional water from the mainstem of the Gila River in the state proceedings. Indeed, the *San Carlos* Court had no occasion to determine the significance of petitioner's *subsequent* limited intervention in the Globe Equity proceedings seven years after this Court decided *San Carlos*. Nor does petitioner contend that the decision below is in conflict with any other decision of this Court or another appellate court.

The precedential significance of the Arizona Supreme Court's decision is also limited. The issue ulti-

mately turns on this Court's decision that the federal courts should defer to Arizona's general stream adjudication—a "virtually unique" context, as this Court noted in *San Carlos*. 463 U.S. at 571.

c. The Arizona Supreme Court's comity holding may lack practical significance even in this case. Absent comity, petitioner's inadequate representation defense would face substantial obstacles on its merits. At the outset, the Arizona Supreme Court questioned the timeliness of any attempt to assert inadequate representation concerning the Globe Equity Decree many years after its entry in 1935. Pet. App. 45a-47a.

The Arizona Supreme Court also observed that this Court, in analogous cases, has twice rejected res judicata arguments similar to the argument made by petitioner in this case. Pet. App. 39a-40a (citing *Nevada* v. *United States*, 463 U.S. 110, 135 (1983); *Arizona* v. *California*, 460 U.S. 605, 626, 628 n.21 (1983) (*Arizona II*)). In *Nevada*, a Tribe sought to raise water rights claims that the United States had not sought on the Tribe's behalf when negotiating a consent decree on behalf of the Tribe and others. See 463 U.S. at 140. In holding that res judicata barred such claims, this Court emphasized that "it could not, consistently with any principle, be tolerated that, after the United States on behalf of its wards had invoked the jurisdiction of its courts . . . these wards should themselves be permitted to relitigate the question." *Id.* at 135 (quoting *Heckman* v. *United States*, 224 U.S. 413 (1912)).

While petitioner argues (Pet. 23 n.32) that an inadequate-representation theory was not raised in *Nevada*, this Court rejected a closely related argument that the United States had labored under a conflict of interest that in turn had led it to claim less water for the Tribe

than it should have in its capacity as a fiduciary. *Nevada*, 463 U.S. at 127-128, 135-136 n.15. Moreover, petitioner relies (Pet. 23 & n.31) on an exception to res judicata that applies where "no justifiable reliance interest" was created on the part of an opposing party because a fiduciary colluded with the opposing party or the fiduciary's representation was "so grossly deficient as to be apparent to the opposing party." Restatement § 42 cmt. f. There is a serious question whether that theory could ever apply where, as here, the United States as sovereign settled a claim for Indian water rights. Even in circumstances where reliance on a *private party's* inadequate representation would be unjustifiable, reliance on the *United States'* sovereign actions presents a different question. Cf. *Nevada*, 463 U.S. at 128, 135, 136 n.15.

As a factual matter, moreover, the United States does not believe that its representation was inadequate in the Globe Equity proceedings in light of, *inter alia*, the Decree's limitation to the Gila River mainstem, the limited amount of land on the San Carlos Apache Reservation that could be readily irrigated from the mainstem, and petitioner's limited historical use of the mainstem for irrigation. See, *e.g.*, OSM No. 17817, at 44-45 (1915 report noting limited amount of Apache land in irrigation along mainstem and that such fields would be inundated by San Carlos reservior); OSM No. 200362, at 18-19 (noting that the Gila River within Apache territory was "unsuitable for traditional Apache agriculture along most of [its] course" due to topography, vegetation, and flooding, and that the Apaches "located most of their farms along permanent streams that fed into the * * * Gila * * * River[]"). Those facts would have been known to the opposing parties at the time the Decree was entered. On this basis as well, there is substantial

reason to question whether petitioner could prevail even if this Court were to reverse the Arizona court's comity holding.

3. Even if this Court were to grant the principal petition, there would be no reason to grant the conditional cross-petition, which raises (Cross-Pet. i) the factbound question whether the Arizona Supreme Court erred by interpreting the Globe Equity Decree to resolve only claims to the Gila River itself, as opposed to that river's tributaries. Cross-petitioner argues (*id.* at 17) that "[t]he Arizona Supreme Court misapplied the federal law of claim preclusion." Under this Court's Rules, however, "[a] petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Sup. Ct. R. 10. There is no reason for a different result in this case, especially because the Arizona Supreme Court's decision is correct and does not conflict with any other appellate decisions.

a. Cross-petitioner argues (Cross-Pet. 21) that federal law requires "an express and clear" reservation in a consent decree for parties to "split" or reserve a claim. The Restatement states, however, that preclusion does not apply when "[t]he parties have agreed in terms *or in effect* that [a] plaintiff may split [a] claim." Restatement § 26(1)(a) (emphasis added). Thus, while an express and clear reservation of rights in a consent decree is *sufficient* to avoid res judicata, it is not invariably *necessary*. See Pet. App. 17a-18a; *Dodd* v. *Hood River County*, 59 F.3d 852, 862 (9th Cir. 1995) (holding that "consent or tacit agreement" can provide "justification for splitting a claim").

The cases cited by cross-petitioner (Cross-Pet. 22-24) do not undermine that conclusion. Some of those cases

expressly recognize that a reservation need not be express. See *Simmons* v. *New Pub. Sch. Dist. No. 8*, 251 F.3d 1210, 1214 (8th Cir. 2001) (quoting Restatement § 26(1)(a)); *Young-Henderson* v. *Spartanburg Area Mental Health Ctr.*, 945 F.2d 770, 774 (4th Cir. 1991). Others rely, for example, on an agreement's "absolute[] silen[ce]." *May* v. *Parker-Abbott Transfer & Storage, Inc.*, 899 F.2d 1007, 1010 (10th Cir. 1990); see *International Union* v. *Karr*, 994 F.2d 1426, 1432 (9th Cir. 1993).

Here, in contrast, the Arizona Supreme Court explained that the Globe Equity Decree grants rights only as to the Gila River, not the tributaries; the United States' amended complaint dropped the claims in its original complaint concerning the tributaries; and the Decree acknowledges the United States' dismissal *without prejudice* of all defendants who had claimed water solely from the tributaries, making it quite clear that such claims were not resolved in the Globe Equity case. Pet. App. 19a-23a. Thus, even if a reservation had to be made in the decree, the Arizona Supreme Court properly rested its decision on the terms of the Decree, as informed by the litigation that preceded it. See *ibid.* Cross-petitioner cites no analogous cases.[3]

---

[3] Even if the parties had not intended to reserve the tributary claims, res judicata would apply only if the mainstem and tributary claims formed part of the same cause of action or transaction. See Pet. App. 12a-14a. Although the Arizona Supreme Court did not fully resolve that question, it recognized that "claims to the Gila River mainstem asserted by the United States in the Globe Equity litigation would not seem to be part of the same 'transaction' as its claim to the tributaries," in part because the mainstem and tributaries are "spatially distinct." *Id.* at 15a.

b. Cross-petitioner errs in asserting (Cross-Pet. 2, 18-19) that the Arizona Supreme Court's decision is in conflict with this Court's decisions in *Nevada* and *Arizona II*. In both cases, this Court held that the United States could not assert claims for the benefit of Indian reservations because decrees in prior proceedings purported—unlike the decree at issue here—to resolve all such claims.

The *Nevada* Court explained that "the only conclusion allowed by the record * * * is that the Government was given an opportunity to litigate the Reservation's entire water rights to the [river], *and that the Government intended to take advantage of that opportunity*." 463 U.S. at 131 (emphasis added); see *id.* at 131-134 (surveying the record). In *Arizona II*, an original case before this Court, the special master likewise determined that "[t]he claim in the [earlier] case . . . embraced the totality of water rights for the Reservation lands." 460 U.S. at 615 (citation omitted). Here, in contrast, the Arizona Supreme Court found, based on its careful consideration of the record, that the parties did *not* intend to resolve tributary claims in the Globe Equity proceedings. Pet. App. 19a-25a. That fact-bound decision is fully consistent with this Court's fact-bound decisions in *Nevada* and *Arizona II*.

c. The Arizona courts' analysis of the record, on which both the trial court and the state supreme court agreed, does not warrant this Court's review. See *Graver Tank & Mfg. Co.* v. *Linde Air Prods. Co.*, 336 U.S. 271, 275 (1949). In any event, that analysis is correct.

While conceding (Cross-Pet. 7) that "the United States limited the geographic scope of the *Globe Equity* litigation," cross-petitioner argues (*id.* at 8) that the amended complaint brought "the tributaries within the

litigation's geographic scope." In defining the relevant river segment, the amended complaint refers to a segment of "the Gila River * * * after the following tributaries of the Gila River, the San Francisco River, and the San Carlos River, the San Pedro River, and the Santa Crus River, respectively, have joined, the main stream." Cross-Pet. App. 74. That language merely defines the portion of the mainstem at issue, without in any way demonstrating an intent to include tributary claims (or rights to divert from tributaries) in the adjudication. See Pet. App. 20a.

While cross-petitioner observes (Cross-Pet. 7) that the amended complaint "named additional parties," including cross-petitioner, "who diverted water only off the tributaries," those parties were dismissed from the adjudication, without prejudice, because their claims were "outside the territorial scope" of the suit and had been included "through inadvertence and mistake"—a point cross-petitioner ultimately acknowledges. *Id.* at 10. Such dismissals were expressly recognized in the Decree. Pet. Supp. App. 120-121.

Although the amended complaint's prayer for relief contained a request that the Court "determine the rights of the parties hereto to the waters of [the Gila River] and its tributaries" (Cross-Pet. App. 75), the Arizona Supreme Court correctly explained that this request must be read in conjunction with the amended complaint's request for a determination of the rights of the parties "to *divert* water from said river within the area aforesaid," *i.e.*, the defined segment of the Gila River mainstem, *ibid.* (emphasis added); see Pet. App. 20a-21a. While some water in the relevant portion of the Gila River came from tributaries, the amended com-

plaint sought adjudication only of rights to water in the river, not in the tributaries. See *id.* at 19a-21a.

Cross-petitioner also argues (Cross-Pet. 24) that the United States "had no reason to exclude the San Carlos River" from its claims if tributary claims were not otherwise included in the claims of the amended complaint. That ignores the fact that the United States expressly claimed appropriations from the San Carlos River on behalf of petitioner in its original complaint. Cross-Pet. App. 10. The exclusion of the San Carlos River in the amended complaint served only to narrow an express request in the original complaint, not to indicate the breadth of the amended complaint with respect to other tributary claims.

CONCLUSION

The petition and conditional cross-petition for a writ of certiorari should be denied.

Respectfully submitted.

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IN THE

Supreme Court of the United States

PHELPS DODGE CORPORATION,

Cross-Petitioner,

v.

SAN CARLOS APACHE TRIBE, *et al.*,

Cross-Respondents.

ON CONDITIONAL CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE ARIZONA SUPREME COURT

BRIEF IN OPPOSITION

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RESTATED QUESTION PRESENTED

Did the Arizona Supreme Court err when it concluded that *res judicata* did not bar the United States as trustee for the San Carlos Apache Tribe, or the Apache Tribe on its own behalf, from claiming in Arizona's general stream adjudication, federal reserved, aboriginal, and other water rights to the tributaries of the Gila River, where the tributaries were not included in the geographic scope of the Amended Complaint filed by the United States in an earlier federal action, and where the consent decree resolving the prior federal action expressly adjudicated only water rights appurtenant to lands along the mainstream of the Gila River, and not the tributaries?

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I. STATEMENT OF THE CASE

The San Carlos Apache Tribe ("Apache Tribe" or "Tribe"), incorporates here its Statement of the Case set forth in the its Petition for Certiorari, No. 06-173, at pp. 2-4, to which Phelps Dodge Corporation's ("Phelps Dodge") Conditional-Cross Petition relates.

II. STATEMENT OF THE FACTS

Phelps Dodge recites a number of purported facts in its Cross-Petition which are either irrelevant to the issue presented or are a misstatement of the underlying history of Apache Tribe and the federal *Globe Equity* litigation. These "facts" require correction pursuant to Rule 15(2) of the Rules of the Supreme Court.

In addition, Phelps Dodge's Statement of Facts ignores the fact that there has never been a trial on the merits of this case, or in *Globe Equity*,[1] from which a factual record can be adduced. Indeed, a great deal of the historical facts surrounding, *inter alia*, the entry of the *Globe Equity No. 59 Decree* ("*Decree*"), the conduct of the United States as trustee for the Apache Tribe in the *Globe Equity* litigation, and the history of Apache People and their struggle to exist on the arid lands of the San Carlos Apache Reservation ("Reservation") are disputed by the Tribe, Phelps Dodge, and the other respondents in this matter.[2]

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[1]The Federal Court in *Globe Equity* made no findings of fact or conclusions of law in the *Decree* as required by Rule 70 ½ of the Rules of Practice for the Courts of Equity of the United States, effective October 1, 1930

[2]As explained in the Apache Tribe's Petition, the preclusive effect of the *Globe Equity Decree* on the Tribe's claims to the mainstream of the Gila River in Arizona's stream adjudication was decided by the trial court on motions for summary judgment, despite the existence of numerous disputed material facts related to the Tribe's defense to *res judicata*, which challenged the adequacy of the United States' representation of the Tribe in the *Globe Equity* litigation, and thereby the existence of "privity" between the United States and the Tribe under

(Cont'd)

It is important to understand at the outset that Phelps Dodge is using the waters of some of the tributaries of the Gila River now. Nonetheless, Phelps Dodge asks that the Apache Tribe, who has prior perfected (though not yet quantified) rights senior to any rights claimed by Phelps Dodge, never be allowed to adjudicate its own rights, even its historically irrigated rights, to the tributaries of the Gila River. If Phelps Dodge's argument were to be adopted, for a Reservation of almost 2 million acres with approximately 1.5 million acres in the Gila River drainage alone, the Apache Tribe, and the United States on its behalf, would be precluded under the *Globe Equity Decree*, from claiming water rights to **any** of the rivers and streams originating on or flowing through its Reservation, except for the San Carlos River, and the annual right under the *Decree* to divert 6,000 acre-feet of water for the irrigation of 1,000 acres of land.[3] This would defeat the purpose for which the Reservation was created and leave the Apache People unable to survive in their permanent Tribal homeland.

(Cont'd)

the elements necessary for *res judicata*. Phelps Dodge's recitation in its Cross-Petition simply repeats many of the facts disputed by the Tribe below — "facts" which have not been proven in a trial on the merits.

[3]The Apache Tribe was decreed 7,300 acre feet of water to serve the San Carlos Apache Reservation through the San Carlos Apache Tribe Water Rights Settlement Act of 1992. P.L. 102-575, 106 Stat . *4740 et seq*. However, the water rights secured by the Settlement Act are only a small portion of the water rights claims for the Reservation, and are only in settlement of the Tribe's claims for remote areas of the Reservation to the Salt, Black and San Pedro Rivers, which can serve very little of the approximately 500,000 acres on the Reservation in those drainages, out of a total of a nearly 2 million acre Reservation. *See* Section II(C) below for full discussion of rights secured by the San Carlos Apache Tribe Water Rights Settlement Act of 1992. ASARCO Incorporated, the Gila River Indian Community, the San Carlos Irrigation and Drainage District, and others also claim all of the water from the San Carlos River which originates and joins the Gila River on the Reservation.

A. The Tributaries to the Gila River Were Not Included in the Geographic Scope of the Amended Complaint or the *Globe Equity Decree*

Phelps Dodge misstates the facts when it recites that the tributaries to the Gila River were included both in the Amended Complaint and the *Globe Equity Decree*, and therefore (according to Phelps Dodge), the *Decree* precludes the claims made by and for the Apache Tribe in Arizona's stream adjudication to the tributaries of the Gila River, except possibly the San Carlos River, under the doctrine of *res judicata*.[4] Phelps Dodge's view of the facts was expressly rejected by the Arizona Supreme Court.[5] Nevertheless, Phelps Dodge relies upon selective quotes, taken from the Amended Complaint and the *Decree* without the aid of context, to weave together a fictional account of the United States' conduct in *Globe Equity* which would seem to have placed the tributaries in issue. This account of events is simply wrong, as a plain reading of the Amended Complaint and the *Decree* quickly reveal.

1. The Amended Complaint Excluded the Tributaries from Its Geographic Scope

While it is true that the Original Complaint in *Globe Equity* included the tributaries to the Gila River within its geographic scope,[6] in the Amended Complaint, the United States deliberately removed the tributaries to narrow the proceedings and make the case more manageable and subject to resolution.[7] The adjudication of rights to water for the tributaries was left for later.

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[4]Cross-Petition at 6-16.

[5]*See* Apache Tribe Appendix to Petition for Certiorari, No. 06-173 ("Apache Tribe App.") at 19a-26a.

[6]*See* Original Complaint, Phelps Dodge Appendix to Cross-Petition, 06-333 ("P.D. App.") at 1-31.

[7]*See* Amended Complaint (P.D. App. 32-76). This was also confirmed in a letter dated December 29, 1931, from John F. Truesdell,

(Cont'd)

A plain review of the Amended Complaint shows that the geographic scope of the Amended Complaint was repeatedly referenced as only "the Gila River" without any mention of the tributaries,[8] and that the water rights alleged in the Amended Complaint were to be satisfied in all instances from the "waters of the Gila River" or "from the Gila River."[9]

While an overwhelming number of references in the Amended Complaint make clear that the United States intended its geographic scope to encompass only the Gila River mainstream,[10] Phelps Dodge points to a single line in the Amended Complaint's prayer for relief where a reference to the tributaries appears.[11] This single sentence, viewed in the context of the entire Amended Complaint, did not place the tributaries in controversy. One need only look to Paragraph 15 of the Amended Complaint to understand that the limited reference to "tributaries" contained in the prayer for relief, was intended to include only those waters of the tributaries **after** the tributaries

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(Cont'd)
Chief Field Counsel, to John Ross, attorney for Phelps Dodge, that "diversions from the tributaries. . . . were not of such a character as to necessitate their determination," and further, "that in all events their handling should be left to the future."

[8]*See, e.g.*, Amended Complaint (P.D. App. 32-76) at ¶¶ 5, 7(b), 8, 9(b), 10, 12(a), 13, 13(b), 13(e), 13(f), 14, 14(a), 14(d), & 15 (making reference to rights claimed by the United States to the Gila River without any reference to the tributaries).

[9]*See id.*

[10]As discussed more fully at Section III(B), *infra.*, it was the practice in Arizona at the time the United States filed its Amended Complaint in Globe Equity to adjudicate conflicting water rights to individual segments of streams or sources of supply separately. Arizona did not begin to conduct a purportedly "**comprehensive**" water rights adjudication until the mid 1970s.

[11]*See* Amended Complaint (P.D. App. 75) ("That the Court, by its decree, determine the rights of the parties hereto to the waters of said river and its tributaries and the rights of said parties to divert water from said river within the area aforesaid . . .).

"have joined, the mainstream" of the Gila River (the only waters within the geographic scope of the Amended Complaint). In describing the geographic scope of the Amended Complaint, Paragraph 15 provides, in relevant part:

> **Each of the defendants . . . claims some right to divert water from the Gila River as it flows between the line 10 miles east of the parallel to the dividing line between Arizona and New Mexico**, and the confluence of the Salt River with the Gila River, **and after** the following **tributaries of the Gila River**, the San Francisco River, the San Carlos River, the San Pedro River, and the Santa Crus River, respectively, **have joined the main stream** . . . or the said defendants claim some right to store the water of said river, or of some tributary thereof, either within or above the stretch of the same as just described. . . .[12]

Furthermore, having limited the geographic scope of the Amended Complaint, the United States, as the plaintiff in the *Globe Equity* litigation, intended to limit the Amended Complaint to include only those persons or entities that claimed a right to divert from the mainstream of the Gila River, that is, those waters of the mainstem of the Gila River which flow between the line 10 miles east of the Arizona and New Mexico border, and then only after its tributaries have joined the River.[13] As explained below, those defendants with claims to any tributary were dismissed by the *Globe Equity Court* on the face of the *Decree.*

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[12]Amended Complaint at 33 (P.D. App. 74) (emphasis added).

[13]*Id.*

2. The *Globe Equity Decree* and Stipulations for Dismissal Entered by the United States Show that the Amended Complaint Did Not Include the Tributaries

As it did with the Amended Complaint, Phelps Dodge also relies on a handful of carefully selected quotes (this time from the *Globe Equity Decree*), to establish, as if fact, that the *Decree* resolved rights to the tributaries of the Gila River.[14] However, a plain reading of these quotes in the context of the entire *Globe Equity Decree* unequivocally shows that the tributaries were expressly **excluded** from the *Decree*. Where claimants to the tributaries were inadvertently named by the United States as defendants to the Amended Complaint, the United States agreed by Stipulation that their inclusion in the Amended Complaint was a mistake, and the *Globe Equity* court thereafter dismissed these claimants from the suit without prejudice.[15] In fact, Phelps Dodge fails to inform the Court that Phelps Dodge was one of the defendants claiming rights to the tributaries that had its claims dismissed from the *Globe Equity* litigation for precisely this reason.

In the Stipulation for Dismissal entered in *Globe Equity* between, *inter alia*, the United States and Phelps Dodge, dated January 29, 1932, both parties agreed that Phelps Dodge was named in the Amended Complaint "**through and by inadvertent mistake and error**; each of them as to their claims and rights [referring to Phelps Dodge and related Arizona Copper Company] being outside and beyond the territorial scope of said

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[14]P.D. Cross-Petition at 13-16.

[15]The effect of "dismissal without prejudice" is so basic that no effort by the Tribe or the Court should be required:.

> **Dismissal Without Prejudice.** Dismissal, as of a bill in equity, without prejudice to the right of the complainant to sue again on the same cause of action. The effect of the words "without prejudice" is to prevent the decree of dismissal from operating as a bar to a subsequent suit. Black's Law Dictionary, 4th ed., 556.

cause as same was and is explicitly defined and described in the Amended Complaint, herein. . . ." (Emphasis added).

The Stipulation for Dismissal goes on to provide that plaintiff United States agrees to the dismissal of Phelps Dodge, Morenci Water Company and various others because "the **claimants or owners of rights of diversion and/or use of water from the tributaries of the Gila River as distinguished from the main stream**, and were made parties defendant herein through inadvertence and mistake. . . ." (Emphasis added). The Stipulation also makes clear that the dismissal is without prejudice as to any of the rights of any of the parties:

> NOW THEREFORE, in consideration of and subject to the conditions named in the premises, it is hereby mutually stipulated and agreed that the cause and the amended complaint herein shall be dismissed, **without prejudice** as above set out, as to defendants Phelps Dodge Corporation and Arizona Copper Company, and each of these; such dismissal to be accomplished by way of a motion or application by plaintiff, in due course and prior to the entry of the decree herein, for an order to that end, made upon due notice to the parties who should be charged therewith; it being understood that plaintiff. . . shall move for a dismissal as to the Morenci Water Company and said other claimants or owners of rights to water **upon the tributaries** of the Gila River; **all to the end that said Phelps Dodge Corporation and Arizona Copper Company, together with defendants last referred to, shall be as though they never had been named or made parties defendant herein**." (Emphasis added).

The dismissal of Phelps Dodge[16] and other claimants on the tributaries is expressly confirmed at Article III of the *Decree*, which contains the only reference in the *Globe Equity Decree* to the tributaries of the Gila River except as describing the locations of measuring guages. Article III lists the names of numerous defendants (including Phelps Dodge) that were dismissed from the suit without prejudice because they were named in the Amended Complaint by "inadvertence, mistake and error", in light of the fact that their claims were "outside the scope" of the suit. Article III provides, in pertinent part:

> [T]hat said defendants and each of them had been **named in this action and amended complaint, as parties defendant herein, through and by inadvertance, mistake and error**, and that their claims and rights, if any, were and are **outside the scope of said suit as same was and is outlined and defined in the amended complaint** herein, and that they and each of them should be dismissed and eliminated from said cause, although some of them had filed their answers setting up their claims and rights to the use of certain waters from some of the **tributaries** of the Gila River, and said answers were filed through mistake and a misunderstanding as to the scope of said cause * * * * **said action and dismissal should be without prejudice to said defendants** and each of them **and/or to any of the other parties in this cause**, or to any claim or rights to the use of water which said defendants, or any of them, or **said other parties or any of them**, now or hereafter may have, against the other or others, **and**

[16]Phelps Dodge avoids any discussion of this Stipulation for Dismissal in its Cross-Petition. This is perhaps because Phelps Dodge knows it is judicially estopped from arguing here that the Amended Complaint encompassed the tributaries, as this is in direct contravention to Phelps Dodge's previous position before the *Globe Equity* court as entered in the Stipulation for Dismissal. *See New Hampshire v. Maine*, 532 U.S. 742, 749-50 (2001); §§ 134.30 (3d ed.).

> **that said defendants, and each of them, should be left as though they never had been named or made parties defendant herein. . . .**[17]

Article V of the *Decree* sets forth the Schedule and Rights of Priorities, also called the "Priority Schedule" for the *Decree*, and provides "that **the Gila River is the stream** from which the water called for under each of said rights [defined in the Schedule of Rights and Priorities] is and may be diverted. . . ."[18] Article V also makes clear "that rights to divert the **waters of the Gila River** are decreed to various canal companies and are set down under their names in the Priority Schedule as of various dates of priority . . . ."[19]

In addition, all of the points of diversion and all of the lands for which rights were decreed in *Globe Equity* were along the mainstream of the Gila River.[20] This is made clear in the Schedule of Rights and Priorities and at numerous other places in the *Decree*.[21] The *Decree* provides for no diversions on the

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[17]*See* Article III, *Decree*, Apache Tribe Supplemental Appendix to Petition for Certiorari, No. 06-173 ("Supp. App") at 121.

[18]Article V, *Decree* (Supp. App. 124) (emphasis added).

[19]Article V, *Decree* (Supp. App. 125) (emphasis added).

[20]Phelps Dodge uncorrectly relies upon references to the locations of guages near the confluence of a tributary with the Gila River mainstream to argue that the tributaries to the Gila River were included in the *Decree*. As the Arizona Supreme Court correctly recognized in its opinion below, the gauge on the San Carlos River is for measurement only. So is the gauge on the San Francisco River. This in no way demonstrates that the tributaries were included in the *Decree*.

[21]*See, e.g.*, Article V, *Decree* (Supp. App. 126-197); Article VIII (Supp. App. 218) ("That the diversions of water from the Gila River by the so-called upper valley defendants (parties defendant to whom rights to divert water from the Gila River at points above the San Carlos Reservation are decreed herein) . . ."); Article VI (Supp. App. 198) ("The right, on behalf of the Apache and other Indians on the San Carlos Reservation . . . to divert 6,000 acre feet of the waters of the Gila River . . . from the natural flow of said river at diversion points on said river

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tributaries to the Gila River and no water is decreed for lands appurtenant to any tributaries. This is further confirmed by Article XIII, which provides that the *Decree* is only binding upon "the parties herein" and only to claims to the "waters of the Gila River."[22]

B. The United States Had a Strong Case for the Apache Tribe at the Time of the *Decree*, But Grossly Failed to Investigate, Prepare, and Press these Tribal Water Rights Claims In *Globe Equity*

Phelps Dodge also mischaracterizes the facts related to the United States' supposed "rationale" behind its decision to secure only a nominal right to the entire Gila River mainstream for the Apache Tribe.[23] While this discussion is irrelevant to Phelps Dodge's Cross-Petition regarding the **tributaries** of the Gila River, Phelps Dodge's misstatement of the facts on this matter requires correction.

Phelps Dodge's version of events relies upon a few rare references "cherry picked" from the thousands of pages of historical documents surrounding the negotiations leading up to the *Globe Equity Decree* in order to infer that the United States had a "weak case" for the Apache Tribe in *Globe Equity*, and thus, it had little choice but to settle in the *Decree* to a nominal right for the Apache Tribe on the mainstream of only 6,000 acre-feet for the annual irrigation of 1,000 acres of land. This statement, slipped into Phelps Dodge's Cross-Petition as "fact", goes to the very heart of the Apache Tribe's Petition for Certiorari to this Court, and the Tribe's cornerstone argument,

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within said Reservation . . . for the reclamation and irrigation of 1000 acres of irrigable lands within said reservation (or in part or wholly within the valley of the Gila River above the eastern boundary of said Reservation, if lands are there acquired by the United States for that purpose) . . .") (parenthetical in original).

[22]Article XIII, *Decree* (Supp. App. 225).

[23]P.D. Cross-Petition at 10-13.

that the United States either did not intend to adjudicate all of the rights to the mainstream to fulfill the purposes for the Apache Reservation, or so grossly and inadequately represented the Tribe in *Globe Equity* as to destroy any vestige of "privity" between the United States and the Tribe, and thereby, to preclude the application of *res judicata* to the Tribe's federal reserved, aboriginal, and other water rights claims to the mainstream of the Gila River. Phelps Dodge has not proven these "facts" at a trial on the merits, and this position is controverted by the overwhelming facts in the historical documents referenced by the Apache Tribe below.[24]

The United States actually had a **strong case** for substantial water rights to the Gila for the Apache Tribe, but the Secretary of Interior ("Secretary") and the attorneys for the United States failed to fully investigate and prepare the Tribe's claims prior to the filing of the Amended Complaint, and failed to pursue these claims in *Globe Equity*, despite clear knowledge of the United States that the Apaches had existing rights to water from historically irrigated land, and the Tribe had substantial rights to the Gila River to fulfill the purposes of the Reservation under the standard established in *Winters v. United States*, 207 U.S. 564, 565 (1908).

To the extent Phelps Dodge alleges that the Tribe had a "weak case", this was not based on the facts or the law at the time of the *Globe Equity* proceedings, but rather was due to the United States' complete disregard of its own records regarding the Apache Tribe and its fiduciary responsibilities to the Tribe in favor of an all out effort to secure water rights for the benefit of the United States' own project, the San Carlos Irrigation Project ("SCIP"),[25] and to

[24]While it is not appropriate at this time to fully brief the facts set forth in the historical documents, in order to correct the misstatements contained in Phelps Dodge's Cross-Petition, the Tribe provides the Court with a brief reference to the historical documents as necessary to meet the requirements of Rule 15(2) of the Rules of this Court.

[25]As a result of various government surveys and reports, including the Report of the Department of Interior Indian Service dated November

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protect the non-Indian farmers upstream from the Apache Reservation from the "menace" of the Apache Tribe's priority.[26]

The Apaches have a long history of cultivating lands along rivers and streams throughout their aboriginal homeland, and once confined to the Reservation, the Apaches began relatively extensive farming operations along the Gila River.[27] With the tools provided by the government, the brush along the Gila River was cleared, ditches were dug, crops were planted and the Apaches put substantial lands along the Gila under cultivation.[28] By 1890, the Apache were successfully farming 8,600 acres along the Gila River.[29]

As explained above, representatives of the United States, including Truesdell, **knew** that under *Winters*, a history of irrigation was not required for the United States to claim substantial water rights for the Tribe in order to fulfill the purpose of the Reservation as a "permanent home and abiding place"

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1, 1915, also known as the Olberg Report", Truesdell and other attorneys for the United States knew that the Apaches had been irrigating from the Gila River in the past, and they also understood that *Winters* did not require an irrigation history to establish federal reserved water rights. Under Winters, the United States was not required to adjudicate rights for the Apache Reservation, and water appurtement to the Reservation could be used as needed to fulfill the purposes of the Reservation as a "permanent home and abiding place" for the Apache Tribe.

[26]In a Letter from then Assistant Chief Counsel for the United States, dated May 22, 1934, it was advised, "In the case of the Apache 1,000 acres...the Decree embodies a plan whereby the upper valley lands may get rid of the menace of this right . . . ."

[27]The Apache Tribe's history of farming in its aboriginal lands has been document in many government reports and surveys as well as in other documents found in the historical documents and scholarly works. *See, e.g., Persistence and Change in Western Apache Culture*, 1980 Report for the San Carlos Apache Tribe, Keith H. Basso, Ph.D. (University of Arizona) ("Basso Report").

[28]*Id.*

[29]*Id.*

for the Apache Tribe.[30] It is simply a misstatement of the facts and law for Phelps Dodge to infer to the contrary in its Cross-Petition.

C. Phelps Dodge Misstates the Water Rights Secured for the Apache Tribe Under the San Carlos Apache Water Rights Settlement Act of 1992

Although the San Carlos Settlement is not material to whether or not the *Decree* precludes the Apache Tribe's claims to the tributaries of the Gila River, or to the mainstream of the Gila River,[31] the misstatements of Phelps Dodge which infer that the Apache Tribe now has abundant water rights to provide for the permanent Tribal homeland of the Tribe as a result of the San Carlos Settlement must be corrected here.

Phelps Dodge misleadingly states that the San Carlos Apache Water Rights Settlement Act of 1992, P.L. 102-575, "gives" the Tribe 76,445 acre feet of water per year,[32] as well as "the ability to store water in the San Carlos Reservoir, money for capital projects, and rights to groundwater on the Reservation."[33] Phelps Dodge misstates the components of the

[30]The Apaches' adaptation to farming along the Gila River once the Reservation was established and the need for water to sustain the new methods of farming is particularly the situation that *Winters* was addressing when the court stated "[i]t was the policy of the Government, it was the desire of the Indians, to change those habits and to become a pastoral and civilized people. If they should become such the original tract was too extensive, but a smaller tract would be inadequate without a change of conditions. The lands were arid and, without irrigation, were practically valueless." *Winters*, 207 U.S. at 576.

[31]Few would disagree that the question of whether the *Decree* can be asserted as *res judicata* against the Tribe's claims must be answered based upon the historical and legal framework that existed at the time of the *Decree*, not based upon circumstances which arose later in time, such as the San Carlos Settlement.

[32]Phelps Dodge incorrectly calculates the waters confirmed to the Tribe under the San Carlos Water Settlement Act. The correct total amount is 71,445 acre-feet per year.

[33]P.D. Cross-Petition at 7-8, n.12.

San Carlos Settlement Act, and fails to explain the true nature of this water right and the CAP contract rights.

The San Carlos Settlement Act confirmed a settlement of certain claims by and for the Apache Tribe to the Black, Salt, and San Pedro River drainages. The Black and Salt Rivers are located on the extreme northern boundary of the Tribe's Reservation. The San Pedro River is located to the extreme southwest of the Reservation, and only a small portion of the Reservation is within this drainage. In total, only approximately 500,000 acres of the Tribe's approximately 2 million acre Reservation are within the Salt, Black and San Pedro River drainages. Additionally, none of the Tribe's Members reside in these drainages, as these areas are generally at high altitudes and are remote, without electricity, and largely undeveloped.

The San Carlos Settlement confirmed, *inter alia*, (1) 7,300 acre-feet of water decreed from the Black and Salt River; (2) 64,145 acre-feet of Central Arizona Project (CAP) contract water that can only be leased or used on the Reservation by exchange with a downstream water user or stored in San Carlos Reservoir; and (3) the right to groundwater and tributaries on the Reservation. For this water, the Tribe agreed to waive its claims to the Salt, Black and San Pedro River drainages.

Nonetheless, the Tribe's ability to use this water to serve its permanent Tribal homeland is extremely difficult and costly. For instance, the 7,300 acre-feet of Black and Salt River "wet" water would have to be pumped out of Black and Salt River Canyons, and then uphill before it could flow the 70 miles to the Gila River in order to serve the main population centers and best farmlands of the Reservation, which are located in the Gila River drainage. Due to objections by parties in *Globe Equity* over the method of accounting for the use of the CAP water, the costs to the Tribe, and the extensive requirements imposed by federal laws such as the Endangered Species Act, in recent years, none of the CAP water has been able to be used on the Reservation, except for approximately 6,800 acre-feet of CAP

water that was stored in San Carlos Lake in 2002, which will soon be completely evaporated.[34]

While the San Carlos Settlement is a significant achievement for the Apache Tribe and confirms a modest water supply for the Reservation to irrigate some of the approximately 500,000 acres of Reservation land located in the Salt, Black and San Pedro River drainages, the Settlement does not obviate the desperate need for the Tribe to realize the full measure of its water rights for the major portion of the Apache Reservation (approximately 1.5 million acres) located in the Gila River drainage where all of the towns, communities, and most of the farmlands of the Tribe are located.

III. REASONS FOR DENYING THE CROSS-PETITION

The issue presented in Phelps Dodge's Cross-Petition was properly decided by the Arizona Supreme Court, and Phelps Dodge has failed to provide any compelling reasons for this Court's review. The Cross-Petition should be denied.

A. The Arizona Supreme Court's Holding on the Tributaries Does not Conflict with Any Relevant Decisions of this Court

Phelps Dodge strains to compare the issues and circumstances in this case with the legal and factual issues addressed by the Court in *Nevada v. United States*, 463 U.S. 110 (1983) and *Arizona v. California*, 460 U.S. 605 (1983) ("*Arizona II*"), urging that "just as the Tribe in *Nevada* was barred from seeking fishery rights to Pyramid Lake and just as the tribes in *Arizona II* were barred from seeking additional irrigation rights for the omitted lands, the [Apache] Tribe here should be barred from seeking additional rights to the tributaries of the Gila River."[35]

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[34]Phelps Dodge's subtle suggestion that the Tribe's right to store water in San Carlos Reservoir somehow makes the issues presently before the Court less important is unsupported in reality. Only very costly CAP water may be stored by the Tribe in the Reservoir, and even then it is the first water to spill when the Reservoir fills up.

[35]P.D. Cross-Petition at 19.

Phelps Dodge fails to explain, however, that both *Nevada* and *Arizona II* involved the mainstream and **tributaries** of the Colorado and Truckee Rivers, while (as explained above) the tributaries to the Gila River were expressly excluded from the geographic scope of the Amended Complaint and in the *Globe Equity Decree*, and the *Decree* expressly and unequivocally confirmed this fact, reserving all claims to the tributaries for adjudication at a later date, including for the United States on behalf of the Apache Tribe.[36]

The Truckee River and its tributaries were expressly adjudicated as part of the "*Orr Ditch*" litigation which began in 1913, when the United States sued to adjudicate the Truckee River and its tributaries for the benefit of the Pyramid Lake Indian Reservation and the United States' planned Newlands Reclamation Project. The *Orr Ditch* litigation was resolved 31 years later by entry of a consent decree known as the *Orr Ditch Decree*. It was the United States' subsequent attempt to obtain **additional** claims from the **Truckee River** for a Tribal fishery for the Pyramid Lake Paiute Tribe which resulted in this Court's decision in *Nevada*, wherein the Court ruled, *inter alia*, that the Government, having successfully made **substantial** claims to

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[36]In an interesting "variation on the theme, Phelps Dodge insists that the United States failed to preserve claims to the tributaries for the Apache Tribe because it did not expressly dismiss the Tribe's claims to the tributaries prior to the entry of the *Decree*, as it did for Phelps Dodge and others. This argument assumes, of course, that the tributaries were included in the scope of the Amended Complaint in the first place, which they were not, and it ignores the fact that the United States, as the **plaintiff** in the action, was entitled to determine the geographic scope of the Amended Complaint. Because it did not include the tributaries in this scope, it had no need to "dismiss" its own claims to the tributaries for the Apache Tribe, as they were not implicated by the Amended Complaint. In contrast, Phelps Dodge and others were inadvertently named in the *Decree*, though they only had claims to the tributaries. The United States realized this mistake, and the claims of these persons and entities on the tributaries were dismissed without prejudice as to any party, including the United States, to adjudicate their claims at a later time.

the Truckee River **and its tributaries** in the *Orr Ditch* litigation for the Pyramid Lake Paiute Tribe,[37] could not later make additional claims to this **same source of water** for purposes of a Tribal fishery.[38]

It is important to understand that the *Orr Ditch* litigation was "no garden variety quiet title action",[39] but rather involved an adjudication of all claims to the Truckee River system and source, including all of the tributaries to the Truckee from the High Sierras to Lake Tahoe, and then from Lake Tahoe all the way down to the Reno, Nevada, and ultimately terminating in Pyramid Lake.[40] This is made clear by the United States in their amended complaint in *Orr Ditch*, where the United States expressly **included** both the Truckee River and all of its tributaries:

> Until the several rights of the various claimants parties hereto, including the United States, **to the use of the waters flowing in said river and its said**

[37]While the water rights originally confirmed for the Pyramid Lake Indian Reservation in *Orr Ditch* represented a significant amount of water, in contrast, the United States secured in *Globe Equity* (for the 1.5 million acres on the Gila River drainage on the Apache Reservation) an annual right to 6,000 acre-feet of water from the Gila mainstream for the irrigation of 1,000 acres of land, and then agreed in the *Decree*, that even this nominal right could be sold to the non-Indians in the Upper Valleys for the benefit of the United States' own project, the SCIP.

[38]*See also* P.D. Cross-Petition at 19, explaining that the District Court in Nevada "'held that neither the United States nor the tribe can litigate several different **types** of water use claims, all arising under the Winters doctrine and all designed for the **same water source**. . . .'" Of course the claims to the tributaries of the Gila River being made in Arizona's stream adjudication are not all designed from the "same water source" adjudicated in *Globe Equity*, but rather are from different sources, namely, the tributaries.

[39]*Nevada*, 463 U.S. at 143 (quoting *United States v. Truckee-Carson Irrigation Dist.*, 649 F.2d 1286, 1308 (9th Cir. 1981) (internal quotation marks omitted).

[40]*Id.* at 114.

> **tributaries** in Nevada or used in Nevada have been settled, the extent, nature, and order in time of each right to divert said waters from said river **and its tributaries** has been judicially determined the United States cannot properly protect its rights in and to the said waters. . . .[41]

Similarly, under the final terms of the *Orr Ditch Decree*, all parties were permanently and **expressly** enjoined from claiming water rights to the waters of the Truckee River **or its tributaries**:

> **The parties, persons, corporations, intervenors, grantees, successors in interest and substituted parties hereinbefore named**, and their and each of their servants, agents, attorneys, assigns and all persons claiming by, through or under them and their successors, in or to the water rights or lands herein mentioned or described, **are and each of them is hereby forever enjoined and restrained from asserting or claiming any rights in or to the waters of the Truckee River or its tributaries**, or the waters of any of the creeks or streams or other waters hereinbefore mentioned except the rights, specified, determined and allowed by this decree. . . .[42]

Thus, while Phelps Dodge makes much of this Court's application of *res judicata* in *Nevada* to bar the United States' additional claims to the Truckee River for a Tribal fishery, Phelps Dodge ignores the crucial distinction between *Orr Ditch* and *Globe Equity*, namely, the express inclusion of the tributaries in

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[41] *Id.* at 131-32 (internal quotation marks omitted) (emphasis added).

[42] *Id.* at 132 (internal quotation marks omitted) (emphasis added). Compare this language to the continuing injunction found at Article XIII of the *Globe Equity Decree*, which provides that ". . . each and all thereof are hereby perpetually restrained and enjoined from diverting, taking or interfering in any way **with the waters of the Gila River** or any part thereof, so as in any manner to prevent or interfere with the diversion, use or enjoyment of said **waters of the Gila River** or any part thereof . . . ." *Decree* at 113 (Supp. App. 225).

Orr Ditch and the express exclusion of the tributaries in *Globe Equity*. In this regard, Phelps Dodge also appears to deliberately confuse the federal reserved, aboriginal and other water rights claims being made by and for the Apache Tribe to the **tributaries** of the Gila River in Arizona's stream adjudication (tributaries which were excluded from the geographic scope of the *Globe Equity Decree*), with the **additional claims** for fisheries made by the United States for the Pyramid Lake Paiute Tribe **in the same case** and to **the same river system and source** (the Truckee River and its tributaries) which were adjudicated in *Orr Ditch*.

In a similar fashion, Phelps Dodge points to this Court's decision in *Arizona II*, where the Court held that the various tribes could not obtain additional water rights for "omitted lands" on the Colorado River, where the water rights to the Colorado River and certain of its tributaries (excepting the Gila River) had been previously confirmed in *Arizona v. California*, 373 U.S. 546, 600 (1963) ("*Arizona I*"), and the United States had secured hundreds of thousands of acre feet of water rights for the tribes.[43] Again, Phelps Dodge deliberately ignores the critical distinction that the tributaries were expressly **included** within the geographic scope of *Arizona I*, and in the subsequent decree entered at *Arizona v. California*, 376 U.S. 340 (1964),[44] while

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[43]*See Arizona II*, 460 U.S. at 617 (observing that the Indians "as represented by the United States, won what can best be described only as a complete victory."). Unlike the record in *Arizona II*, it simply cannot be said with a straight face that the United States won even a minor victory in *Globe Equity* for the Apache Tribe for its claims to the mainstream of the Gila River.

[44]*See, e.g., Arizona I*, 373 U.S. at 550 ("the basic controversy in this case is over how much water each State has a legal right to use out of the waters of the Colorado river and its tributaries."); *Id.* at 595 ("In these proceedings the United States has asserted claims to waters in the main river and in some of the tributaries, for use on Indian

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the tributaries to the Gila River were **not included** in the Amended Complaint or the *Globe Equity Decree*.

In short, Phelps Dodge's heavy reliance on the Court's discussions in *Nevada* and *Arizona II* regarding *res judicata* is misplaced, and the Arizona Supreme Court's decision below, which confirmed that neither the Apache Tribe, nor the United States as trustee for the Tribe, are precluded from claiming water rights to the tributaries of the Gila River, is not in conflict with these or any other rulings of the Court. Phelps Dodge's Cross-Petition should be denied.

B. The United States Was Not Required to Include the Tributaries in the Scope of the Amended Complaint, and Its Decision to Exclude the Tributaries Does Not Now Preclude the United States or the Tribe From Making Claims to the Tributaries in Arizona's Stream Adjudication

As discussed above, the *Globe Equity* proceeding was expressly limited in scope and effect to only the mainstream of the Gila River from a point ten miles east from the Arizona/ New Mexico border to a point 100 yards upstream of the confluence of the Gila and Salt Rivers. The *Decree* does not quantify a single right that does not draw its water from the mainstream of the Gila River within this defined geographic scope.

Phelps Dodge insists, however, that the United States's decision to limit the geographic scope of the Amended Complaint to the Gila River mainstream was improper "claim splitting" because (according to Phelps Dodge) "the waters of the tributaries are a part of the waters of the mainstream of the

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Reservations. . . ."); *see also Decree in Arizona v. California*, 376 U.S. at 341 (defining "tributaries" to mean "all stream systems the waters of which naturally drain into the mainstream of the Colorado River below Lee Ferry . . ."); *Id.* at 352 (referencing specific diversions rights to the mainstream and named tributaries on the Colorado River).

Gila River when they join the Gila River" making the tributaries the "same source" of water, to which the United States was presumably obligated to litigate all of its claims or face the consequences of *res judicata*.[45] Phelps Dodge's novel presentation of *res judicata* was neither the law nor the practice in Arizona at the time the Amended Complaint was filed, or when the *Decree* was entered. In addition, if adopted, Phelps Dodge's application of *res judicata* would have serious consequences for parties and their successors in interest who participated in the numerous historical piecemeal adjudications and decrees entered on segments of rivers and streams throughout Arizona.

Arizona's water history is replete with adjudications and lawsuits involving contests between conflicting water rights on limited and defined reaches of rivers and streams, including in the Gila River System and Source. These seemingly isolated, non-comprehensive adjudications to a particular "stream or supply" were the norm under Arizona law and the practice at the time of the *Globe Equity Decree*,[46] and continued to be the norm until Arizona undertook a purportedly comprehensive adjudication of water rights under the amended Arizona general adjudication statutes adopted in 1979 and thereafter, and this Court's decision decision on the McCarran Amendment, 43 U.S.C. § 666, in *Arizona v. San Carlos*, 463 U.S. 545 (1983).

This historical approach to resolving competing water rights claims to limited stretches of streams in Arizona resulted in the entry of a number of water rights decrees involving defined segments of streams and/or sources of supply in Arizona,

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[45]P.D. Cross-Petition at 20-21.

[46]*See, e.g.* Arizona Code, 1939, §§ 75-114 through 75-127 (providing for separate and piecemeal adjudications of one or more conflicting rights to divert from a particular stream or supply by the state water commissioner, which were then filed with the superior court and, if contested, proceeded upon "like a suit in equity" and upon conclusion, subject to the entry of a written decree or judgment).

including, *inter alia*, the *Kent Decree*, *Hance v. Arnold*, *Haggard Decree*, *Benson-Allison Decree*, *Ling Decree*, *Lockwood Decree*, *Doan Decree*, *Jenkes Decree*, *Shute Decree*, *San Pedro Decision*, and court decisions such as *Clifford v. Larrieu*, *Hill v. Lenerman*, *Dyke v. Caldwell*, *Miller v. Douglas*, *Boquillas Land and Cattle Company v. Saint David Cooperative Comm. and Dev. Assoc.*, *Wolf v. Turner*, *Pyeatt v. Huachuca Queen Mining Co.*, *Salt River Valley Water Users Assoc. v. Lee*, *Lee v. Lee*, and *Clarkson and Clarkson v. Wilcox*.

It would be nothing short of a catastrophic state of affairs in Arizona, if, as Phelps Dodge argues under its "single source theory", the purported failure of these decrees and decisions to include in their scope each and every upstream tributary, now barred under principles of *res judicata*, parties to these actions (and their successors in interest) from asserting or proving their claims to the upstream tributaries in Arizona's stream adjudication. This, of course, was not the state of the law at the time the above listed decrees or the *Globe Equity Decree* were entered.[47] Phelps Dodge's revisionist application of relatively new principles of law to the historical entry of past water rights decrees, such as the *Globe Equity Decree*, is without basis in the law or common sense, and should be rejected.

C. Parties to Consent Decrees May Agree to "Split" Their Claims, And the Court May Determine to Preserve Certain Claims for a Subsequent Action

The *Globe Equity Decree* is a consent decree entered by the *Globe Equity* court to resolve certain claims among certain parties. Consent decrees do not bar subsequent litigation, even on the same transactional facts, when the settlement agreements

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[47]*See also* Notes to Decisions, Arizona Code Annotated, 1939, § 75-127 (explaining in reference to the reopening of water rights decrees, that [a] decree is res judicata between the parties as to the issues only and not as to the rights of the actual parties of which no issue was made . . ." and observing that "[m]atters not adjudicated by the decree, or arising subsequent thereto . . . may be sought in an independent proceeding.").

which provide the basis for such decrees, are narrowly tailored by the parties, as is the case with the *Decree*.[48] In this respect, even under current standards of law applying *res judicata*, consent decrees are treated differently in that *res judicata* only applies to the subject matter upon which the parties finally agree. It does not apply to what they could, might, or should have litigated. *See Arizona v. California*, 530 U.S. 392, 395-396 (2000).[49]

Thus, in *Globe Equity*, the claims filed against defendants on the tributaries by inadvertence and mistake were later dismissed **without prejudice** by stipulation, and the *Decree* expressly and unequivocally retained and preserved the claims and defenses to the tributaries for **all** parties, including the United States for the Apache Tribe. *See Semetek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497 (2001); *Lewis v. Riebe Enterprises, Inc.*, 170 Ariz. 384, 395; 825 P.2d 5, 7 (1992). This is made clear by express order of the *Globe Equity Court* in the *Decree* at Article III, which provides in pertinent part, that:

> **[S]aid action and dismissal should be without prejudice to said defendants** and each of them **and/or to any of the other parties in this cause**, or **to any claim or rights to the use of water which said defendants**, or any of them, **or said other parties or any of them, now or hereafter may have**, against the other or others, **and that said defendants, and each of them, should be left as though they never**

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[48]Given the very different factual issues surrounding the claims to the tributaries, as well as the distinct physical features of the tributaries, the Apache Tribe does not agree that claims to the tributaries arise out of the same transactional nucleus of facts as claims to the mainstream of the Gila River. *See Restatement (Second) Judgments*, § 24; *Hells Canyon Preservation Council v. U.S. Forest Service*, 403 F.3d 683 (9th Cir. 2005).

[49]*See also Moore's Federal Practice*, Volume 18, § 131.30 (3)(a) & (c)(ii).

> **had been named or made parties defendant herein. . . .**[50]

Sections 26(1)(a) and (b) of the *Restatement (Second) Judgments* provide:

> When any of the following circumstances exists, the general rule of § 24 does not apply to extinguish the claim, and part or all of the claim subsists as a possible basis for a second action by the plaintiff against the defendants:
>
> (a) The parties have agreed in terms or in effect that the plaintiff may split his claim, or the defendant has acquiesced therein; or
>
> (b) The court in the first action has expressly reserved the plaintiff's right to maintain the second action;

Both Sections 26(1)(a) and (b) apply to preclude the application of *res judicata* to the tributaries in this case. As noted already, the defendants agreed with the United States that the geographic scope of the *Globe Equity* litigation was limited to the adjudication of water rights to the mainstream of the Gila River only, they stipulated to this fact, and agreed to be dismissed **without** prejudice. The *Globe Equity* court resolved the litigation surrounding the Amended Complaint through entry of a consent *Decree* which acknowledged such stipulations, and dismissed the tributary claims without prejudice as to any parties' rights or claims, including the United States' claims for the Apache Tribe.[51]

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[50]*See* Article III, *Decree* (Supp. App. 121) (emphasis added).

[51]*See also* Wright, Miller & Cooper, *Federal Practice and Procedure*, Vol. 18 (2002), § 4413, at 314, (explaining that an order, judgment, or decree that specifies that certain claims are preserved for future litigation, even if they are part of the "same cause of action" under a "transactional nucleus of facts" analysis, does **not** operate to bar such claims under the doctrine of res judicata); see also § 26(1)(b) of the *Restatement (Second) Judgments; and Venuto v. Witco Corp.*, 117 F.3d 754, 758-761 (3rd Cir. 1997).

Moreover, even in instances where stipulations for dismissal by plaintiffs are silent as to whether the dismissal is with or without prejudice, such a dismissal is normally deemed to be "without prejudice."[52] Of course, as explained above, the *Decree* was not silent on this point.

Phelps Dodge insists that *May v. Parker-Abbot Transfer and Storage, Inc.* ("*Parker-Abbot*"), 899 F.2d 1007 (10th Cir. 1990), requires that where parties agree to preserve specific claims for future litigation, such an agreement to split-claims must be "express and clear."[53] The legal propositions contained in this case are unremarkable, and offer nothing to upset the Apache Tribe's arguments for the tributaries here.

The intent of the parties to exclude the tributaries from the geographic scope of *Globe Equity* was "express and clear" as evidenced by the Amended Complaint, the Stipulation and Orders of Dismissal, and the *Decree*. Moreover, in *Parker-Abbot*, the parties entered into a settlement agreement approved by the court which did **not** reserve any claims of the parties, and the court dismissed the action with **prejudice**. The opposite was true in *Globe Equity*.[54]

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[52]*See* Rule 41(b) Federal Rules of Civil Procedure; *see also Moore's Federal Practice*, Volume 18, § 131.30 (3)(b)(1), which provides:

> Under the Federal Rules of Civil, a plaintiff may dismiss any action by notice prior to service of an answer or motion for summary judgment by the adverse party, and thereafter by stipulation signed by all of the parties who have appeared in the action. Unless otherwise stated in the notice of stipulation, the dismissal will not bar a subsequent action on the same claim B it is deemed "without prejudice."

[53]P.D. Cross-Petition at 21-22.

[54]It is also significant that the cases cited by Phelps Dodge on this topic do not involve water rights claims for Indian Tribes. If there remains any ambiguity at all from a plain reading of the Amended Complaint, the Stipulations of Dismissal, and the *Globe Equity Decree* as to whether or not the United States excluded the tributaries from the scope of its (Cont'd)

For many of these same reasons, Phelps Dodge's reliance on the Ninth Circuit's decision in *California v. Randtron*, 268 F.3d 891 (9th Cir. 2001), as amended by 284 F.3d 969, is similarly misplaced. In *Randtron*, the City of Lodi, California, brought suit against, *inter alia*, Randtron Corporation for soil and groundwater contamination, under a variety of federal and state environmental laws. Eventually, a settlement was reached between Randtron and the City of Lodi. However, in the consent decree entered by the District Court, Lodi's claims against Randtron were released only to the extent those claims were covered by two named insurance policies, known to be in existence at the time of the suit. The consent decree said nothing about any claims for contribution Randtron might have against the City of Lodi arising out of the contamination event.

On appeal from a subsequent action, the Ninth Circuit concluded that the consent decree **did not** bar Lodi from asserting the same claims against Randtron in the subsequent suit, to the extent it was determined Randtron possessed other insurance assets. The Ninth Circuit went on to conclude, however, that as to Randtron's new cross-claim for contribution

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(Cont'd)

action and/or expressly reserved the right to adjudicate its claims to the tributaries later in time, such ambiguity must be resolved in favor of preserving the Apache Tribes claims. This is required under the canons of construction applicable in Indian law — cannons which are rooted in the "unique trust relationship between the United States and the Indians" *County of Oneida v. Oneida Indian Nation of N. Y.*, 470 U.S. 226, 247 (1985); *see also Choctaw Nation v. United States*, 119 U.S. 1, 28 (1886). These canons require that treaties and other agreements purporting to affect Indian Tribes must be liberally construed most strongly in favor of the Indians; ambiguous expressions must be resolved in favor of the Indians; and, are to be construed as the Indians would have understood them. *See Winters*, 207 U.S. at 576-77; *see also Choctaw Nation v. Oklahoma*, 397 U.S. 620, 631 (1970); Apache Treaty, Article 11 (Apache Tribe App. 297a). These important cannons of construction have been specifically applied to interpretations of the *Globe Equity Decree. See, e.g., United States v. Gila Valley Irrigation District*, 31 F.3d 1428, 1438 (9th Cir. 1994).

against the City of Lodi, arising out of the **same** alleged circumstances of environmental contamination, Randtron (unlike the City of Lodi) had failed to preserve its claims in the consent decree, and therefore it was precluded by *res judicata* from asserting its claim for contribution against Lodi in the subsequent action.

The *Randtron* ruling has little to no application the Arizona Supreme Court's decision that neither the Apache Tribe nor the United States on the Tribe's behalf are precluded by the *Globe Equity Decree* from claiming federal reserved, aboriginal or other water rights claims to the tributaries of the Gila River.

First, the tributaries and mainstream do not comprise the same "claim" (unlike Lodi's claim for environmental contamination) and they are not part of the same transactional nucleus of facts as the United States' claims to the mainstream. Second, the tributaries were expressly excluded from the scope of the Amended Complaint (which was the legal and practical norm in Arizona water adjudications at the time). Third, the exclusion of the tributaries from the geographic scope of the Amended Complaint was expressly confirmed in the *Globe Equity Decree*. Finally, even if the tributaries were part of the same "claim" as the mainstream rights (which they were not), the parties expressly agreed in the *Decree* to the exclusion of all claims to the tributaries, and dismissed such claims without prejudice as to all parties to the *Decree* (including the United States for the Apache Tribe) to bring such claims in the future. *Randtron* simply does not apply.[55]

D. Principles of "Finality" Are Not Defeated By the Arizona Supreme Court's Ruling On the Tributaries

In what can only be viewed as a "last ditch effort" to convince the Court to grant its Cross-Petition, Phelps Dodge predicts a virtual doomsday situation in Arizona if the Apache

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[55]The *Globe Equity Decree* must be construed as a contract. *See Moore's Federal Practice*, Volume 18, § 131.30 (3)(c)(iv).

Tribe and the United States as its trustee are allowed to adjudicate claims to the tributaries of the Gila River for the Apache Reservation, imploring that principles of finality of judicial determinations will be upset, much of the Arizona economy will be disrupted, and persons whom have relied on the *Globe Equity Decree* will be deprived of their "investment-backed expectations."[56]

Phelps Dodge merely reiterates here the long litany of arguments that non-Indians have always leveled against Indian Tribes when they strive to develop the resources of their Reservations and to realize some measure of prosperity for their people now and in the future. These arguments were wrong then, and they are wrong now.[57]

The Apache Tribe has already explained that principles of "finality" will not be upset if the Tribe is able to assert its rightful claims to the tributaries of its Reservation. The *Globe Equity Decree* did not include the tributaries (as Phelps Dodge acknowledged in its original Stipulation of Dismissal from *Globe Equity*), and there is nothing in the history of the *Globe Equity* litigation that bars the United States and the Tribe from proving its claims to the tributaries now in Arizona's stream

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[56]P.C. Cross-Petition at 29.

[57]The Arizona Supreme Court confronted similar claims of harm to Arizona's interests when it applied principles of federal reserved water rights to the groundwater underlying Indian reservations in Arizona. *See In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, 989 P.2d 739, 750-751 (1999). While the Arizona Supreme Court recognized that the federal reserved water rights doctrine "threatens to disrupt the assumptions that underlie state law uses" and to impose a "burden" in the accommodation of such rights, particularly as to agricultural, industrial, mining and urban interests, the Court nevertheless observed that these non-Indian interests have long understood, "sometimes noted, sometimes wished away" the looming need to adjudicate the federal reserved water rights for Indian Reservations in Arizona, and these interests should not now be surprised that the time of accommodating these interests may have arrived. *Id.* Nothing less can be said for the Apache Tribe's claims on the tributaries.

adjudication. Moreover, any reliance that non-Indian interests may have placed upon the *Globe Equity Decree* in their development of "investment-backed expectations" *vis-a-vis* the tributaries would plainly have been unjustified and misplaced, as the *Decree* does not adjudicate a single right to the tributaries in its Schedule of Rights and Priorities.[58] Indeed, Phelps Dodge and others on the tributaries have known since their dismissal from *Globe Equity* that all rights to the tributaries would eventually be adjudicated.[59]

Phelps Dodge also offers nothing in support of its suggestion that "much" of Arizona's economy will be disrupted if the Tribe is able to finally realize its claims to the tributaries flowing on and to its Reservation, nor could it. How long has the life of the Apache People been disrupted? How long have the Apaches been impoverished and unable to realize their hopes and dreams of prosperity, while they watch the precious waters of the tributaries diverted by non-Indians interests like Phelps Dodge and other off Reservation interests? The Tribe is entitled to have its water rights to the tributaries of the Gila River adjudicated in Arizona's stream adjudication.

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[58]*See* Article V (Supp. App. 12-197).

[59]The Arizona Supreme Court has also recognized that the adjudication of all rights "*inter se se*" in the State will result in a "gallon for gallon" reduction of water use by some, for all the waters in the Gila River have been put to use. *See In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, 35 P.3d 68, 81 (2001); *see also In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, 989 P.2d at 750-751. This Court recognized in *Arizona v. San Carlos*, 463 U.S. at 551, the need for a comprehensive adjudication of water rights, including for Indian Tribe's, given their "ubiquitous nature."

IV. CONCLUSION

Phelps Dodge has failed to present an issue which warrants this Court's consideration or review. Its Conditional Cross-Petition should be denied.

Respectfully submitted,

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In The
Supreme Court of the United States

PHELPS DODGE CORPORATION,

Conditional Cross-Petitioner,

v.

SAN CARLOS APACHE TRIBE; STATE OF ARIZONA; GILA RIVER INDIAN COMMUNITY; ASARCO LLC; SAN CARLOS IRRIGATION AND DRAINAGE DISTRICT; CITY OF SAFFORD; GILA VALLEY IRRIGATION DISTRICT; FRANKLIN IRRIGATION DISTRICT; SALT RIVER PROJECT; CITY OF GOODYEAR; BHP COPPER INCORPORATED, AND UNITED STATES OF AMERICA,

Cross-Respondents.

On Petition For Writ Of Certiorari To The Arizona Supreme Court

BRIEF IN OPPOSITION OF CROSS-RESPONDENT ASARCO LLC

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QUESTION PRESENTED

ISSUE: Whether the Arizona Supreme Court erred in holding that a consent decree entered by the United States District Court for the District of Arizona, adjudicated only claims to water of the mainstem of the Gila River, and not claims to water of that river's tributaries.

CORPORATE DISCLOSURE STATEMENT

ASARCO LLC, a Delaware limited liability company, is wholly owned by Asarco Incorporated, a Delaware corporation. Asarco Incorporated is wholly owned by Americas Mining Corporation, a Delaware corporation. Americas Mining Corporation is wholly owned by Grupo Mexico, S.A. de C.V. Grupo Mexico, S.A. de C.V. is traded on the Mexican Stock Exchange. No stock of the other entities mentioned is publicly traded.

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CHARLES A. WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, FEDERAL PRACTICE & PROCEDURE § 4412 (2002) 8

STATEMENT OF THE CASE

ASARCO LLC ("ASARCO") incorporates by reference the statement of facts in part I of the primary opinion below, as well as the recitation of facts found in part III.B of that opinion. *In re General Adjudication of All Rights to Use Water in Gila River System & Source*, 212 Ariz. 64, 67-69, 72-76, 127 P.3d 882, 885-87, 890-94 (2006), *reconsideration denied*, 212 Ariz. 470, 134 P.3d 375 (2006).

ASARCO is the successor in interest to the water rights of Kennecott Copper Corporation, a party to the 1935 decree in *United States v. Gila Valley Irrig. Dist., et al.*, Petitioner's Supplemental Appendix in Docket No. 06-173 ("No. 06-173 Supp. App.") at 103 *et seq.* (the "Globe Equity Decree" or "Decree"). *See* 212 Ariz. at 75, 127 P.3d at 893. Kennecott was the successor in interest of the Nevada Consolidated Copper Company, which in turn succeeded to the interest of Ray Consolidated Copper Company. Decree, Art. III at 11, No. 06-173 Supp. App. at 123. ASARCO's decreed rights include the right to use water for industrial, municipal, domestic and related purposes. *Id.*, Art. IX(3) at 109, No. 06-173 Supp. App. at 221; *id.*, Art. V at 19, 20, 23, 26, 28, 31, 36, 52, 57, 58, No. 06-173 Supp. App. at 131, 132, 135, 138, 140, 143, 148, 164, 169, 170. They also include the right to use water for irrigation. *Id.*, Art. IX(4) at 109, No. 06-173 Supp. App. at 221; *id.*, Art. V at 58, 66, 72, No. 06-173 Supp. App. at 170, 178, 184; *id.*, Art. IX(5) at 110, No. 06-173 Supp. App. at 222.

ASARCO also possesses rights to tributaries of the Gila River, both as successor in interest to Kennecott and in its own right. For example, Kennecott owned rights to Mineral Creek, a tributary of the Gila River, at the time it entered into the Decree.

REASONS FOR DENYING THE CONDITIONAL CROSS-PETITION

The Arizona Supreme Court addressed at length and rejected each of the arguments advanced in the Cross-Petition, in part III.B of the principal opinion below. 212 Ariz. at 72-76, 127 P.3d at 890-94. In doing so, it analyzed the initial and amended complaints framing the pre-Decree litigation in *United States v. Gila Valley Irrig. Dist., et al.*, key provisions of the Decree, and the procedural history preceding that Decree. It considered relevant federal case law, the First and Second Restatements of Judgments, and treatise commentary. While ASARCO disagrees with the Supreme Court's interpretation of the Decree with respect to the San Carlos River, the Court's overall evaluation of the issue posed by the Cross-Petition was thorough and consistent with the law of the federal Courts of Appeals.[1]

A. The Arizona Supreme Court's Decision Is Consistent With The Case Law Of The Federal Courts And Other State Courts.

1. The Arizona Supreme Court Correctly Held that the Parties to the Globe Equity Decree Intended to Limit its Preclusive Effect by Generally Eliminating Tributary Claims from its Coverage.

The Cross-Petitioner's principal quarrel with the decision below is with its conclusion that the Globe Equity

[1] In this Brief, when ASARCO refers to exclusion of tributaries from the scope of the Decree, it refers to tributaries other than the San Carlos River. ASARCO reiterates its view that the natural flow of the San Carlos River was decreed explicitly to its predecessor in interest by Article IX(5) of the Decree at 110, No. 06-173 Supp. App. at 222.

court and parties intentionally crafted a consent decree that narrowed its geographic scope from that sought in the original Bill of Complaint to a Decree excluding the tributaries of the Gila River. According to the Cross-Petition, this limitation on the scope of preclusion could be accomplished only by an express statement of intent in the Decree, which the Cross-Petitioner finds lacking. *See* Cross-Petition at 21-28.

The Arizona Supreme Court methodically dismantled all of the Cross-Petitioner's arguments that the Decree is preclusive of the Globe Equity parties' claims to the Gila River's tributaries. 212 Ariz. at 72-76, 127 P.3d at 890-94. ASARCO will highlight here only a few of the reasons the Cross-Petition is not well-taken.

The Decree itself stated that its scope is restricted to the mainstem of the Gila River. Article V, for example, declared that "the Gila River is the stream from which the water called for under each of said rights [recognized by the Decree] is and may be diverted. . . ." Art. V at 12, No. 06-173 Supp. App. at 124. The Decree also confirmed the previous dismissal of numerous defendants (including the Cross-Petitioner) without prejudice because "their claims and rights, if any, were and are outside the scope of said suit as same was and is outlined and defined in the amended complaint herein," despite the fact that some of the defendants to be dismissed "had filed their answers setting up their claims and rights to the use of certain waters from some of the tributaries of the Gila River, and said answers were filed through mistake and a misunderstanding as to the scope of said cause as outlined and defined in plaintiff's said amended complaint." Art. III at 9, No. 06-173 Supp. App. at 121. *See also* ASARCO

LLC's Appendix ("App.") App. 1-3; App. 4-6; App. 7-10; App. 11-13; App. 14-15; App. 16-19; App. 20-21.[2]

Article XIII of the Decree enjoined the parties, their successors and assigns

> from asserting or claiming – as against any of the parties herein, their assigns or successors, or their rights as decreed herein – any right, title or interest in or to the waters of the Gila River, or any thereof, except the rights specified, determined and allowed by this decree, and each and all thereof are hereby perpetually restrained and enjoined from diverting, taking or interfering in any way with the waters of the Gila River or any part thereof, so as in any manner to prevent or interfere with the diversion, use or enjoyment of said waters of the Gila River or any part thereof, so as in any manner to prevent or interfere with the diversion, use or enjoyment of said waters by the owners of prior or superior rights therein as defined and established by this Decree. . . .

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[2] The 1932 stipulation filed by the Cross-Petitioner and the United States leading to the Cross-Petitioner's dismissal was even more explicit in explaining that the Globe Equity action no longer encompassed the tributaries. It recited:

> WHEREAS approximately forty others of the defendants herein, comprising the Morenci Water Company and various irrigators of parcels of land – like the said [Phelps Dodge] Corporation and [Arizona Copper] Company – are the claimants or owners of rights of diversion and/or use of water from the tributaries of the Gila River as distinguished from the main stream, and were made parties defendant herein through inadvertence and mistake, which mistake likewise is to be rectified by their separation from this cause and elimination as parties thereto. . . .

App. 8.

Art. XIII at 113, No. 06-173 Supp. App. at 225. The Decree only "defined and established" rights with points of diversion on the mainstem of the Gila River (*see generally* Art. V at 12-72, No. 06-173 Supp. App. at 124-84), and the injunction is restricted expressly to diversions from "the waters of the Gila River or any part thereof" that impermissibly interfere with those decreed rights.

The Cross-Petitioner would have this Court find that the Globe Equity parties, while consenting to dismissal of these defendants (again, including the Cross-Petitioner) without prejudice, thereby preserving their tributary claims for another day, nevertheless surrendered their own existing rights to the tributaries without even mentioning such an extraordinary act of self-sacrifice. Such an interpretation of the Globe Equity parties' unspoken intent is implausible in a region where water is scarce, and conflicts over water are noted for their intensity and persistence.

The Decree should be construed basically as a contract. *United States v. Gila Valley Irrig. Dist.*, 31 F.3d 1428, 1433 (9th Cir. 1994), *citing United States v. ITT Continental Baking Co.*, 420 U.S. 223, 236-37 (1975). Parties to a consent decree may limit its preclusive effect explicitly or implicitly. Section 26(1)(a) of the RESTATEMENT (SECOND) OF JUDGMENTS (1980) notes that claims may be reserved where the "parties have agreed in terms *or in effect* that the plaintiff may split his claim, or *the defendant has acquiesced therein. . . .*" (emphasis added). Comment *a* to § 26 states that the rule of preclusion is "not applicable where the defendant consents, in express words *or otherwise*, to the splitting of the claim." (emphasis added). If, as the Cross-Petitioner suggests, an express exclusion of tributary claims was a prerequisite to their preservation, then the RESTATEMENT'S alternative of reserving a claim "in effect" would be superfluous.

The federal courts have recognized that claims can be preserved in the absence of express agreement. *See, e.g.*, *Venuto v. Witco Corp.*, 117 F.3d 754, 759-60 (3d Cir. 1997); *United States v. Martell*, 887 F. Supp. 1183, 1191 (N.D. Ind. 1995). Even in *California v. Randtron*, 284 F.3d 969 (9th Cir. 2002), on which the Cross-Petitioner relies, the court considered not only the terms of the consent decree but also the district court's interpretation of that decree. *Id.* at 975.

The parties to a consent decree can acquiesce implicitly to preservation of claims. *See, e.g.*, *Pueschel v. United States*, 369 F.3d 345, 356 (4th Cir. 2004) (Federal Aviation Administration "in effect consented to splitting" of plaintiff's claims by representation made in motion for summary judgment in prior action); *Bankruptcy Estate of Lake Geneva Sugar Shack, Inc. v. General Star Indem. Co.*, 200 F.3d 479, 481, 485 (7th Cir. 2000) (party's refusal to consent to consolidation of claims acquiesced in – and in fact encouraged – splitting of claims). The Cross-Petitioner's stipulation that tributary claims were outside the Globe Equity court's jurisdiction was, at a minimum, acquiescence in that restriction in the scope of the litigation and resulting Decree.

The Cross-Petitioner's stipulation reflected the nature of the Globe Equity litigation. That action was a quasi in rem proceeding.[3] *See Brooks v. United States*, 119 F.2d 636,

[3] "A judgment *in rem* affects the interests of all persons in designated property. A judgment *quasi in rem* affects the interests of particular persons in designated property. The latter is of two types. In one the plaintiff is seeking to secure a pre-existing claim in the subject property and to extinguish or establish the nonexistence of similar interests of particular persons. In the other the plaintiff seeks to apply what he concedes to be the property of the defendant to the satisfaction of a claim against him." *Hanson v. Denckla*, 357 U.S. 235, 246 n.12

(Continued on following page)

640, 641 (9th Cir.), *cert. denied*, 313 U.S. 594 (1941). The res in Globe Equity was the mainstem of the Gila River within the geographical reach defined by the amended complaint. *See* 212 Ariz. at 73-74, 127 P.3d at 891-92; Cross-Petitioner's App. at 74. "If jurisdiction is based on the court's power over property within its territory, the action is called '*in rem*' or '*quasi in rem*.' The effect of a judgment in such a case is limited to the property that supports jurisdiction and does not impose a personal liability on the property owner, since he is not before the court." *Shaffer v. Heitner*, 433 U.S. 186, 199 (1977) (footnote omitted). "Since a State is forbidden to enter a judgment attempting to bind a person over whom it has no jurisdiction, it has even less right to enter a judgment purporting to extinguish the interest of such a person in property over which the court has no jurisdiction." *Hanson v. Denckla*, 357 U.S. 235, 250 (1958) (footnote omitted).

The Globe Equity court's jurisdiction was limited to the mainstem of the Gila River within the designated reach. Art. III at 9, No. 06-173 Supp. App. at 121. Because the court's jurisdiction was quasi in rem and thus limited, it had no jurisdiction to adjudicate anyone's claims to water sources (i.e. the tributaries) outside that geographic jurisdiction. Numerous decisions recognize that preclusion cannot operate on claims as a result of the decision of a tribunal lacking jurisdiction over those claims. *See, e.g.*, *Carver v. Nall*, 172 F.3d 513, 516 (7th Cir. 1999); *Bio-Technology General Corp. v. Genentech, Inc.*, 80 F.3d

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(1958). In *Hanson*, this Court used the term "in rem" to include both in rem and quasi in rem proceedings. *Id. See Nevada v. United States*, 463 U.S. 110, 144 (1983) ("water adjudications are more in the nature of *in rem* proceedings"); *see also Rickey Land & Cattle Co. v. Miller & Lux*, 218 U.S. 258, 261-62 (1910).

1553, 1563 (Fed. Cir.), *cert. denied*, 519 U.S. 911 (1996); *Texas Employers' Ins. Ass'n v. Jackson*, 862 F.2d 491, 501-03 (5th Cir. 1988), *cert. denied*, 490 U.S. 1035 (1989); *Paragon Serv., Inc. v. Hicks*, 843 F. Supp. 1077, 1080-81 (E.D. Va. 1994); *McSherry v. Giannuzzi*, 717 F. Supp. 238, 241 (S.D.N.Y.), *appeal denied*, 889 F.2d 1098 (Fed. Cir. 1989) (table). Application of preclusion would be even more unfair in Globe Equity, where the court declined to rule on claims to tributaries asserted by the Cross-Petitioner and other defendants dismissed without prejudice. *See* CHARLES A. WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, FEDERAL PRACTICE & PROCEDURE § 4412 at 276-77 (2002).

2. Adjudication of Only a Portion of a River System Is Not Unique to the Gila River.

The fact that the Decree adjudicated the mainstem of the Gila River without affecting claims to the river's tributaries is not unique. The so-called Kent Decree, for example, purported to decree rights to the Salt River and its tributary, the Verde River, but only those rights appurtenant to lands located in the vicinity of Phoenix, Arizona. *See Taylor v. Tempe Irrig. Canal Co.*, 21 Ariz. 574, 577, 193 P. 12, 13-14 (1920). A subsequent effort to enlarge the Kent Decree to encompass unresolved claims to the Verde River for lands lying outside the Kent Decree's geographic extent was denied for failure to join affected landowners. *Hurley v. Abbott*, 259 F. Supp. 669, 669-70 (D. Ariz. 1966). *See also Provo River Water Users' Ass'n v. Morgan*, 857 P.2d 927, 935 (Utah 1993); *cf. In re Rules & Regulations Governing Use, Control, & Protection of Water Rights for Both Surface & Underground Water Located in Rio Grande & Conejos River Basins & Their Tributaries*, 674 P.2d 914, 927 (Colo. 1984) (Rio Grande Compact did

not include certain tributaries); *State ex rel. Thompson v. Lavery*, 49 P. 852, 853 (Or. 1897) ("adjudication that a proprietor has no right to appropriate the waters of the main stream does not necessarily determine that he has no right to any of the waters of the tributaries thereof"). The Arizona Supreme Court's decision broke no new ground.

B. The Cross-Petitioner Is Estopped To Assert That The Decree Precludes Claims To Tributaries Of The Gila River.

The Cross-Petitioner represents to this Court in its "Question Presented" that "the tributaries were within the geographic scope of the *Globe Equity* adjudication. . . ." Cross-Petition at i. The doctrine of judicial estoppel precludes the Cross-Petitioner from making that assertion before this Court in light of its own actions in securing dismissal without prejudice from the Globe Equity suit.

"'[W]here a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him.'" *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001), *quoting Davis v. Wakelee*, 156 U.S. 680, 689 (1895). Several factors inform this rule known as judicial estoppel. This Court provided a non-exhaustive list of these factors in *New Hampshire*: 1) the party's later position must be clearly inconsistent with its earlier position; 2) whether the party succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or the second court was misled; and 3) whether the party seeking to assert an inconsistent position would

derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped. *New Hampshire*, 532 U.S. at 750-51.

The Cross-Petitioner succeeded in securing its dismissal from the Globe Equity suit by affirming to the court that the Cross-Petitioner and other defendants to be dismissed

> are the claimants or owners of rights of diversion and/or use of water from the tributaries of the Gila River as distinguished from the main stream, and were made parties defendant herein through inadvertence and mistake, which mistake likewise is to be rectified by their separation from this cause and elimination as parties thereto; .... all to the end that said Phelps Dodge Corporation and Arizona Copper Company, together with the other defendants last referred to, shall be as though they never had been named or made parties defendant herein.

App. 8-9. The Cross-Petitioner was dismissed without prejudice on this basis. App. 16-18; Art. III at 9, No. 06-173 Supp. App. at 121. Its dismissal was premised on the fact that claims to tributaries of the Gila River were beyond the scope of the litigation, precisely the opposite of the position it presses in its Cross-Petition. Were the Cross-Petitioner to succeed in this effort, it would secure an unfair advantage over those parties to the Decree who, at the time of the Decree, claimed rights to the tributaries of the Gila River as well as to the mainstem of the river. The Cross-Petitioner would have this Court rule that those who remained parties to the litigation and entered into the Decree thereby relinquished their rights to the tributaries, while the Cross-Petitioner retained its tributary claims by

virtue of having assured the Court that such claims were beyond the scope of the litigation. This outcome would be patently inequitable, and create the impression that either this Court or the Globe Equity court has been misled. Considerations of equity require that the Court deny the Cross-Petition.

C. The Cross-Petition Presents No Issues Warranting This Court's Attention.

This Court has emphasized that "it is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public, as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority" among the lower courts. *Layne & Bowler Corp. v. Western Well Works, Inc.*, 261 U.S. 387, 393 (1923). The Court decides questions of public importance "in the context of meaningful litigation." *The Monrosa v. Carbon Black Export, Inc.*, 359 U.S. 180, 184 (1959). It does not do so in disputes "of importance merely to the litigants" that "did not present an issue of immediate public significance." *Rice v. Sioux City Mem'l Park Cemetery, Inc.*, 349 U.S. 70, 78-79 n.2 (1955).

The ruling below turns on an interpretation of the Globe Equity Decree, a 71-year old consent decree with a defined – and limited – geographic scope, regardless of whether the Arizona Supreme Court's or the Cross-Petitioner's delineation of that scope is correct. A ruling by this Court would have little if any import beyond the watershed of the middle and upper Gila River, the reaches of the stream encompassed by the Decree, and beyond the factual setting presented by the Globe Equity litigation. This Court's review cannot therefore be justified

on the basis that its decision would have broad application on an issue of immediate public significance.

The Decree has been the subject of intensive analysis and enforcement by the originating District Court and the Court of Appeals for the Ninth Circuit over its lifetime. Resulting *published* opinions include *United States v. Gila Valley Irrig. Dist.*, 920 F. Supp. 1444 (D. Ariz. 1996), *aff'd*, 117 F.3d 425 (9th Cir. 1997); *United States v. Gila Valley Irrig. Dist.*, 804 F. Supp. 1 (D. Ariz. 1992), *aff'd in part and rev'd in part*, 31 F.3d 1428 (9th Cir. 1994); *United States v. Gila Valley Irrig. Dist.*, 961 F.2d 1432 (9th Cir. 1992); *United States v. Gila Valley Irrig. Dist.*, 454 F.2d 219 (9th Cir. 1972); *Brooks v. United States*, 119 F.2d 636 (9th Cir.), *cert. denied*, 313 U.S. 594 (1941); *Gila Valley Irrig. Dist. v. United States*, 118 F.2d 507 (9th Cir. 1941). There have been numerous unpublished rulings as well. Any interpretation of the Decree by this Court would have to be undertaken against the backdrop of this complex litigation history.

Finally, for the reasons set forth above and in the Arizona Supreme Court's own words, that Court's decision is consistent with established law. This Court's involvement is not required to resolve a conflict of opinion among the lower courts.

CONCLUSION

The Conditional Cross-Petition for Writ of Certiorari is without merit and should be denied.

Respectfully submitted this 7th day of December, 2006.

FENNEMORE CRAIG, P.C.

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Superior Court of Arizona
Maricopa County

Contested Case No. W1-203
In re the Water Rights of the
Gila River Indian Community

Doc. #W1-203-5689

3/31/98

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF ARIZONA

THE UNITED STATES OF AMERICA, Plaintiff, vs. GILA VALLEY IRRIGATION DISTRICT, ET AL, Defendants.	IN EQUITY NO. E-59-GLOBE STIPULATION FOR DISMISSAL OF CERTAIN PARTIES DEFENDANT.

It is stipulated by and between the United States of America, plaintiff herein, through its solicitor, Clifton Mathews, Esq., United States Attorney, and Messrs. Kibbey, Bennett, Gust, Smith and Rosenfeld, solicitors for those certain parties whose names are herein listed;

That the hereinafter named parties were made parties defendant in the above entitled action through inadvertence and mistake, and that their and each of their interests, if any, are outside the territorial scope of said cause as it was and is defined in the Amended Complaint, and that none of them are necessary parties defendant, and that their dismissal and elimination from said action will be to their best interests and promote the settlement

of [illegible] issues which the United States seeks to have determined in said cause.

That some of the parties have no interests whatever in said action.

It is further stipulated that some of said parties may have, through a clear mistaken view of the facts, filed an answer herein, and presented claims, which ought never to have been filed, and that said answers, where filed, should be dismissed from the records without prejudice.

It is also stipulated that an order of dismissal, without prejudice, may be made as to and against each of the following parties:

S. B. Blake; Cluff & Mitchell; Colvin-Jones Consolidated Ditch Co.; John H. Davidson; W. P. Ferris; Jose Gonzales; T. Hinton; Layton & Ison; James Layton; E. D. McEuen; Roy A. Martin; Ed Moody; J. C. Norton; George A. Olney; Asa Packard; N. E. Platt; W. E. Posy; S. A. Powell; Pursley & Nash; Mrs. Mary Reynolds; Bert E. Rose; Smithville Extension Canal Company; Cinaco Telles; E. L. Tidwell; Louis Voelckel; W. J. Walton; T. W. Wamslee; Estate of Webster, F.A. Webster, Administrator; Estate of J. H. Williams; B. D. Wilson; Young & Ridgway;

Dated this [Illegible] day of December, 1934.

/s/ Clifton Mathews
Clifton Mathews, Esq.,
United States Attorney,
Solicitor for the plaintiff.

/s/ Kibbey Bennett Gust
Smith & Rosenfeld
Kibbey, Bennett, Gust,
Smith and Rosenfeld,
Solicitors for the above
named defendants.

(Filed March 30, 1935)

Superior Court of Arizona
Maricopa County

Contested Case No. W1-206
In re the Preclusive Effect of the
Globe Equity No. 59 Decree on Specified Parties

Doc. #W1-206-200364

1/31/2000

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF ARIZONA

THE UNITED STATES OF AMERICA, Plaintiff, vs. GILA VALLEY IRRIGATION DISTRICT, ET AL, Defendants.	IN EQUITY NO. E-59-GLOBE STIPULATION FOR DISMISSAL OF CERTAIN PARTIES DEFENDANT.

It is stipulated by and between H. A. Elliott and A. R. Lynch, solicitors for the hereinafter named parties defendant, and Clifton Mathews, Esq., United States Attorney and solicitor for the plaintiff, that:

The hereinafter named parties were made defendants in the above entitled cause through inadvertence and mistake as to interest, and that they and none of them are necessary parties defendant.

That their and each of their interests are outside the territorial scope of said suit as it was and is defined in the Amended Complaint.

That their dismissal and elimination as parties will best serve their interests and the interests of those whose rights the United States seeks to have determined in said cause, and that it will promote the settlement of said issues.

That through a clear mistake as to the facts, each of said parties appeared and some of them filed an answer setting forth claims based upon said mistaken view of the facts. It is therefore agreed that said appearances and answers may be treated as dismissed without prejudice.

It is also agreed that the Court may make an order of dismissal without prejudice as to and against each of the following parties:

Bank of Duncan; D. E. Barlow; J. W. Becker; Billingsley Canal Company; R. T. Bishop; Harry H. Boyer; Burcher Ditch Company; Estate of W. C. Cheatham; Edward C. Cole; Consolidated Canal Company; J. H. T. Cosper; Cosper-Wilson Canal Company; Ethel M. Cunningham; E. C. DeMose; Double Circle Cattle Company; Thomas Edwards; Bonnie Elrage; Mangus Elrage; Mrs. Geo. J. Filleman; J. J. Filleman; Franklin Canal Company; Fred J. Fritz; Mrs. Katie Fritz; Furr & Blain; Harve K. Gatlin; Gila Ranch Company; Greenhorn Ditch Company; Greenhorn Irrigating Canal; County of Greenlee; O. C. Greenwell; Ole Hagan; William F. Hagan; S. P. Hale; Francelle Haywood; Mrs. Clara Hicks; County of Hidalgo; Hill Ditch; Francis M. Hodges; Lettie F. Hunt; M. J. Jensen; M. L. Jensen; D. L. Johnson; F. E. Johnson; R. S. Johnson; A. L. Jones; J. H. Jones, Sr., Estate; Martin & Pearson Ditch; Martin & Pearson Irrigating Canal Company; Arven Mortensen; T. J. Nations; G. O. Payne; C. V.

Peery; T. M. Peters; Dell M. Potter; Fred Powell; R. Richardson; Romney Brothers; Romney & Lunt; Rucker Ditch; School District No. 30; J. M. Smelley; A. F. Smith; The Estate of Spoon, Ira L. Spoon, Adm.; A. G. Stevenson; W. R. Stevenson; Sunset Irrigating Canal Company; D. H. Thompson; W. Plune Tibbets; H. P. Trainor; Virden Ward; Ward & Courtney Dam Company; T. M. Williamson; State of New Mexico.

Dated this 27th day of December, 1934.

H. A. Elliott by ARL
/s/ A. R. Lynch
H. A. Elliott and
A. R. Lynch, Solicitors
for the above named
defendants.

/s/ Clifton Mathews
Clifton Mathews, Esq.,
United States Attorney,
Solicitor for the plaintiff.

(Filed March 30, 1935)

App. 7

Superior Court of Arizona
Maricopa County

Contested Case No. W1-206
In re the Preclusive Effect of the Globe Equity No. 59 Decree on Specified Parties

Doc. #W1-206-200365

1/31/2000

IN THE DISTRICT COURT OF THE UNITED STATES
IN AND FOR THE DISTRICT OF ARIZONA

THE UNITED STATES OF AMERICA, Plaintiff, v. GILA VALLEY IRRIGATION DISTRICT, et al., Defendants.	GLOBE EQUITY NO. 59 STIPULATION

This stipulation, by and between the plaintiff herein and defendants Phelps Dodge Corporation and Arizona Copper Company (hereinafter, as a matter of convenience, referred to as the Corporation and the Company), doth witness:

THAT WHEREAS said Corporation and Company were named in this cause and the Amended Complaint as parties defendant herein through and by inadvertent mistake and error; each of them as to their claims and rights being outside and beyond the territorial scope of

said cause as same was and is explicitly defined and described in the Amended Complaint herein, and

WHEREAS the orderly alignment and conduct, or as the case be, settlement of said cause, requires that said mistake be rectified, and it further appears that it will be consistent with the best interests of said defendants, and of aid to plaintiff and the great number of true defendants in achieving an adequate determination herein of those claims and rights which are within the scope and intention of this suit, to provide for the separation therefrom of said Corporation and Company, and the elimination of each of them as a party defendant in this cause by way of an appropriate order of Court herein; said action to be without prejudice to them or either of them, or to any of the other parties in this cause, or to any claims or rights to water which said Corporation and Company, or either of them, or said other parties or any of them, now or hereafter may have, one or any number thereof against the other or others; and

WHEREAS approximately forty others of the defendants herein, comprising the Morenci Water Company and various irrigators of parcels of land – like the said Corporation and Company – are the claimants or owners of rights of diversion and/or use of water from the tributaries of the Gila River as distinguished from the main stream, and were made parties defendant herein through inadvertence and mistake, which mistake likewise is to be rectified by their separation from this cause and elimination as parties thereto; same to be arranged for by plaintiff and accomplished through an appropriate order of Court – it being understood that the assent of said Corporation and Company to this Stipulation, in the absence of a further agreement between

the parties thereto, is conditioned upon the successful and reasonably complete accomplishment of the above general program, and in particular upon the elimination as parties defendant, in the manner aforesaid, of the Morenci Water Company and of all (or such number as will be satisfactory to the Corporation and Company) of the claimants and/or users of water from the San Francisco River and its tributaries (including Chase Creek) who now are named as defendants herein;

NOW THEREFORE, in consideration of and subject to the conditions named in the premises, it is hereby mutually stipulated and agreed that this cause and the amended complaint herein shall be dismissed, without prejudice as above set out, as to defendants Phelps Dodge Corporation and Arizona Copper Company, and each of them; such dismissal to be accomplished by way of a motion or application by plaintiff, in due course and prior to the entry of the decree herein, for an order to that end, made upon due notice to the parties who should be charged therewith; it being understood that plaintiff, upon like notice to the parties, in its said application or motion, or by way of a separate one in conjunction therewith, likewise shall move for a dismissal as to the Morenci Water Company and said other claimants or owners of rights to water upon the tributaries of the Gila River; all to the end that said Phelps Dodge Corporation and Arizona Copper Company, together with the other defendants last referred to, shall be as though they never had been named or made parties defendant herein.

/s/ [Illegible]
Special Assistant to the
Attorney General, Solicitor
for Plaintiff.

/s/ [Illegible]
Solicitors for the Phelps
Dodge Corporation and
Arizona Copper Company.

Dated January 29, 1932.

(Filed March 30, 1935)

Superior Court of Arizona
Maricopa County

Contested Case No. W1-203
In re the Water Rights of the Gila River Indian Community

Doc. # W1-203-17181

3/24/1999

IN THE DISTRICT COURT OF THE UNITED STATES
IN AND FOR THE DISTRICT OF ARIZONA

THE UNITED STATES OF AMERICA, Plaintiff, v. GILA VALLEY IRRIGATION DISTRICT, et al. Defendants.	)	GLOBE EQUITY NO. 59 STIPULATION.

This stipulation, by and between the plaintiff herein and defendant Morenci Water Company (hereinafter, as a matter of convenience, referred to as the Company), doth witness:

THAT WHEREAS said Company was named in this cause and the Amended Complaint as a party defendant herein through and by inadvertent mistake and error; said Company as to its claims and rights being outside and beyond the territorial scope of said cause as same was and is explicitly defined and described in the Amended Compalint [sic] herein, and

WHEREAS the orderly alignment and conduct, or as the case be, settlement of said cause requires that said mistake be rectified, and it further appears that it will be consistent with the best interests of said defendant, and of aid to plaintiff and the great number of true defendants in achieving an adequate determination herein of those claims and rights which are within the scope and intention of this suit, to provide for the separation therefrom of said Company, and its elimination as a party defendant in this cuase [sic] by way of an appropriate order of Court herein; said action to be without prejudice to it, or to any of the other parties in this cause, or to any claims or rights to water which said Company, or said other parties or any of them, now or hereafter may have, one or any number thereof against the other or others; and

WHEREAS approximately forty others of the defendants herein, comprising the Phelps Dodge Corporation and Arizona Copper Company and various irrigators of parcels of land – like the said Company – are the claimants or owners of rights of diversion and/or use of water from the tributaries of the Gila River as distinguished from the main stream, and were made parties defendant herein through inadvertence and mistake, which mistake likewise is to be rectified by their separation from this cause and elimination as parties thereto; same to be arranged for by plaintiff and accomplished through an appropriate order of Court – it being understood that the assent of said Company to this Stipulation, in the absence of a further agreement between the parties thereto, is conditioned upon the successful and reasonably complete accomplishment of the above general program, and in particular upon the elimination as party defendant, in the manner aforesaid, of the Phelps Dodge Corporation and Arizona Copper Company and of all (or such number as

will be satisfactory to the Company) of the claimants and/or users of water from the Eagle River (a tributary of the Gila River) who now are named as defendants herein;

NOW THEREFORE, in consideration of and subject to the conditions named in the premises, it is hereby mutually stipulated and agreed that this cause and the amended complaint herein shall be dismissed, without prejudice as above set out, as to defendant Morenci Water Company; such dismissal to be accomplished by way of a motion or application by plaintiff, in due course and prior to the entry of the decree herein, for an order to that end, made upon due notice to the parties who should be charged therewith; it being understood that plaintiff, upon like notice to the parties, in its said application or motion, or by way of a separate one in conjunction therewith, likewise shall move for a dismissal as to the Phelps Dodge Corporation and Arizona Copper Company and said other claimants or owners of rights to water upon the tributaries of the Gila River; all to the end that said Morenci Water Company, together with the other defendants last referred to, shall be as though they never had been named or made parties defendant herein.

/s/ [Illegible]
Special Assistant to the Attorney General, Solicitor for Plaintiff.

/s/ [Illegible]
/s/ [Illegible]
/s/ [Illegible]
Solicitors for the Morenci Water Company

(Filed March 30, 1935)

Superior Court of Arizona
Maricopa County

Contested Case No. W1-206
In re the Preclusive Effect of the Globe Equity No. 59 Decree on Specified Parties

Doc. # W1-206-200366

1/31/2000

IN THE DISTRICT COURT OF THE UNITED STATES

IN AND FOR THE DISTRICT OF ARIZONA

THE UNITED STATES OF AMERICA, Plaintiff, vs. GILA VALLEY IRRIGATION DISTRICT, ET AL, Defendants.	)	IN EQUITY NO. E-59-GLOBE STIPULATION

WHEREAS, the Aztec Mutual Canal Company; James LeRoy McCarthy; Frank C. Ellwell; and Richard E. Geyler; were made parties to the above entitled cause through inadvertence and mistake, and

WHEREAS, they each filed answers herein, also through inadvertence and confusion as to their rights; and

WHEREAS, they are not necessary parties defendant herein, they are willing to be dismissed without prejudice and their answers be held as never having been filed.

Now therefore, it is hereby stipulated by and between the parties hereto through their solicitors of record: that the suit and the Amended Complaint may be dismissed as

against each of the foregoing defendants without prejudice and that their answers may be dismissed without prejudice as against them or any of the parties to this action.

Dated December 27th, 1934.

/s/ Clifton Mathews
Clifton Mathews, Esq.,
United States Attorney,
Solicitor for the plaintiff.

/s/ Chalmers Fennemore Nairn
Chalmers, Fennemore and Nairn, Solicitors for the defendants whose names are listed in the foregoing stipulation.

(Filed March 30, 1935)

Superior Court of Arizona
Maricopa County

Contested Case No. W1-206
In re the Preclusive Effect of the Globe Equity No. 59 Decree on Specified Parties

Doc. #W1-206-200367

1/31/2000

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF ARIZONA

THE UNITED STATES OF AMERICA, Plaintiff, vs. GILA VALLEY IRRIGATION DISTRICT, ET AL, Defendants.	IN EQUITY NO. E-59-GLOBE ORDER DISMISSING CERTAIN DEFENDANTS

This cause coming on to be heard upon motion of Clifton Mathews, Esq., solicitor for the plaintiff, requesting the dismissal of certain parties defendant from this action, for the reasons among others, that; the parties in said motion named and hereinafter named were made parties defendant, through inadvertence and mistake, and

That their, and each of their, interests, if any, in the issues involved in this action are outside the territorial scope of this suit as it was and is defined in the Amended Complaint, and

That said and each of such parties are not necessary parties defendant to this suit, and

That each of the said and hereinafter named parties have, through their attorneys, stipulated that they be dismissed as parties defendant.

The Court, being fully advised in the premises, finds that each and all of the hereinafter named parties are not necessary parties defendant herein, and accordingly it is ordered that those certain defendants hereinafter listed and each of them be and they are hereby dismissed as parties defendant in this cause without prejudice.

The parties to whom this order applies are:

S.B. Blake; Cluff & Mitchell; Colvin-Jones Consolidated Ditch Co.; John H. Davidson; W.P. Ferris; Jose Gonzales; T. Hinton; Layton & Ison; James Layton; E.D. McEuen; Roy A. Martin; Ed Moody; J.C. Norton; George A. Olney; Asa Packard; N.E. Platt; W.E. Posy; S.A. Powell; Pursley & Nash; Mrs. Mary Reynolds; Bert E. Rose; Smithville Extension Canal Company; Cinaco Telles; E.L. Tidwell; Louis Voelckel; W.J. Walton; T.W. Wamslee; Estate of Webster, F.A. Webster, Administrator; Estate of J.R. Williams; B.D. Wilson; Young & Ridgway;

Also:

Bank of Duncan; D.E. Barlow; J.W. Becker; Billingsley Canal Company; R.T. Bishop; Harry H. Boyer; Burcher Ditch Company; Estate of W.C. Cheatham; Edward C. Cole; Consolidated Canal Company; J.H.T. Cosper; Cosper-Wilson Canal Company; Ethel M. Cunningham; Z.C. DeMoss; Double Circle Cattle Company; Thomas Edwards; Bonnie Elrage; Mangus Elrage; Mrs. Geo. J. Filleman; J.J. Filleman; Franklin Canal Company; Fred J. Fritz; Mrs. Katie Fritz; Furr &

Blain; Harve X. Gatlin; Gila Ranch Company; Greenhorn Ditch Company; Greenhorn Irrigating Canal; County of Greenlee; O.C. Greenwell; Ole Hagan; William F. Hagan; S.P. Hale; Francolle Heywood; Mrs. Clara Hicks; County of Hidalgo; Hill Ditch; Francis M. Hodges; Lettie F. Hunt; M.J. Jensen; M.L. Jensen; D.L. Johnson; F.E. Johnson; R.S. Johnson; A.L. Jones; J.H. Jones, Sr., Estate; Martin & Pearson Ditch; Martin & Pearson Irrigating Canal Company; Arven Mortensen; T.J. Nations; G.O. Payne; C.V. Peery; T.M. Peters; Dell M. Potter; Fred Powell; R. Richardson; Romney Brothers; Romney & Lunt; Rucker Ditch; School District No. 30; J.M. Smelley; A.F. Smith; The Estate of Spoon, Ira L. Spoon, Adm.; A.G. Stevenson; W.R. Stevenson; Sunset Irrigating Canal Company; D.H. Thompson; W. Plune Tibbets; H.P. Trainor; Virden Ward; Ward & Courtney Dam Company; T.M. Williamson; State of New Mexico.

Also:

Phelps Dodge Corporation; Arizona Copper Company;

Also:

Morenci Water Company;

Also:

Aztec Mutual Canal Company; James LeRoy McCarthy; Richard E. Geyler; Frank C. Elwell.

It is further ordered that the answer of each of said defendants who may have filed one herein, be and the same is hereby dismissed without prejudice and shall stand as if never filed.

Dated this 30th day of March, 1935.

/s/ F.C. Jacobs
Judge of the United States District
Court, in and for the District of Arizona

(Filed March 30, 1935)

Superior Court of Arizona
Maricopa County

Contested Case No. W1-203
In re the Water Rights of the Gila River Indian Community

Doc. #W1-203-5688

3/31/98

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF ARIZONA

THE UNITED STATES OF AMERICA, Plaintiff, vs. GILA VALLEY IRRIGATION DISTRICT, ET AL, Defendants.	IN EQUITY NO. E-59-GLOBE ORDER DISMISSING CERTAIN DEFENDANTS

This cause coming on to be heard upon the motion of Clifton Mathews, Esq., United States Attorney, solicitor for the plaintiff, requesting the dismissal of certain defendants, from which, and the records, it appears the following named persons, to-wit:

> Castlio Ditch; Thomas Crabtree; Ed Elrage; Dale M. Garden; Jensen Brothers; J.B. Johns; F. Vernon Jones; William L. Keppler; Randall Lunt; Vernon Lunt; M.J. McClaren; Hugh McKeen; William Milligan; Alfred Mortenson; Nichols & Company; Tomas Ponce; Serano R. Sexton; Ernest D. Shade; C.M. Short; Frank Shriver; A.R. Snyder; S. Stewart; T.L. Stockton; J.A. Suydam; Luther T. Sweeting; Miss E.A. Swofford; O.F. Swofford; Bonnie Ulrage; J.F. Wardner; and W.M. Willis;

were made parties defendant through inadvertence and mistake, and that all but six of said persons have no interest and that as to those six, who claimed a right to the use of water from certain tributaries of the Gila River, they are outside the scope of this action as defined and outlined in the plaintiff's Amended Complaint; that they are not necessary parties hereto; that they and each of them through their solicitors of record have stipulated that they may be dismissed and their answers in this cause stand as never having been filed, and the Court, being fully advised in the premises, orders, upon the grounds and for the reasons aforesaid, that this suit and the Amended Complaint be and it is hereby dismissed as against each of them without prejudice.

* * *

Dated this 30th day of March, 1935.

/s/ F.C. Jacobs
Judge of the United States District Court, in and for the District of Arizona

(Filed March 30, 1935)

(4)

No. 06-333

FILED

DEC 8 - 2006

OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The
Supreme Court of the United States

PHELPS DODGE CORPORATION,

Conditional Cross-Petitioner,

vs.

SAN CARLOS APACHE TRIBE; STATE OF ARIZONA; GILA RIVER INDIAN COMMUNITY; ASARCO LLC; SAN CARLOS IRRIGATION AND DRAINAGE DISTRICT; CITY OF SAFFORD; GILA VALLEY IRRIGATION DISTRICT; FRANKLIN IRRIGATION DISTRICT; SALT RIVER PROJECT; CITY OF GOODYEAR; BHP COPPER INCORPORATED; and UNITED STATES OF AMERICA,

Cross-Respondents.

On Petition For Writ Of Certiorari To The Arizona Supreme Court

GILA RIVER INDIAN COMMUNITY'S BRIEF IN OPPOSITION

RODNEY B. LEWIS
Counsel of Record
JENNIFER K. GIFF
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Attorneys for the Gila River Indian Community

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Did the Arizona Supreme Court correctly determine that the *Globe Equity No. 59 Decree*[1] does not preclude the San Carlos Apache Tribe from claiming the right to use water from the tributaries of the mainstem of the Upper Gila River because of *res judicata*?

[1] Consent Decree, *United States v. Gila Valley Irrigation District et al.*, June 29, 1935, Federal District Court in and for the District of Arizona.

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STATEMENT OF FACTS

I. THE *GLOBE EQUITY NO. 59 DECREE*

A. HISTORY OF WATER RIGHTS LITIGATION IN ARIZONA

During the nineteenth century and through the middle of the twentieth century, Arizona was a substantially rural state. The lands in Arizona are largely arid or semi-arid. Early Euro-American settlers wanted to use the limited water supplies for irrigation, mining, and domestic purposes. But, as Mark Twain observed, "Whisky is for drinkin', water is for fightin'." Early water users in Arizona did most of their fighting in a series of small, localized court cases. These cases adjudicated the water rights of a limited number of participants to the use of water from a limited geographic stretch of the Gila River System.

Prior to 1974, with the initiation of what would eventually become the *General Adjudication of All Rights to Use Water in the Gila River System and Source*, the water users and the courts had little ability and less inclination to deal with complex, geographically expansive water rights litigations. The following decrees and decisions, involving small portions of the Gila River watershed, were entered by Arizona courts in multiple counties prior to 1974: the *Kent Decree,* the *Haggard Decree,* the *Benson-Allison Decree*, the *Ling Decree,* the *Lockwood Decree*, the *Doan Decree,* the *Jenkes Decree*, the *Shute Decree*, the *San Pedro Decision*, *Clifford v. Larrieu*, *Hill v. Lenerman*, *Gila Bend Reservoir & Irrigation Co. v. Peoria Canal Co.*, *Gila Land & Cattle Co. v. Gila Water Co.*, *Arlington Canal Co. v. Simpson*, *Gillespie Land & Irrigation Co. v. Simpson*, *Gila Land & Cattle Co. v. Gila Water Co.*, *Dyke v. Caldwell*, *Miller v. Douglas*, *Boquillas Land and Cattle Company v. St. David Cooperative Comm. and Dev. Association*, *Wolf v. Turner*, *Pyeatt v. Huachuca Queen Mining Company*, *Salt River Valley Water Users Association v. Lee*, *Lee and Lee*, *Clarkson and Clarkson v. Wilcox* and the *Globe Equity No. 59 Decree.*

B. THE UNITED STATES' PURPOSE FOR INITIATING THE *GLOBE EQUITY* LITIGATION

Prior to the arrival of Euro-Americans, the *Akimel O'odham* (the River People) and the *Peeposh* (the People), also known as the Pima and Maricopa Indians, had an economic, political, and military confederation the aboriginal territory of which included all of the lands and waters in what is now central Arizona. The Pima and Maricopa Indians were prosperous and healthy. Then Euro-American latecomers moved upstream from the Pima-Maricopa lands and diverted the waters of the Gila and Salt Rivers away – often running the waters into the desert rather than allowing the waters to flow back into the riverbeds and make their way to the Pima-Maricopa lands. The Pima and Maricopa Indians were reduced to poverty, starvation, and endemic diabetes.

The Pima-Maricopa Confederation had allied with the United States Army in the 1850s through 1880s to protect Euro-American settlers from hostile Indian tribes. Despite this loyalty, the United States failed to protect Pima-Maricopa water rights. In 1924, the United State Congress made an effort to partially remedy this serious wrong through passage of the San Carlos Project Act [Pub. L. No. 68-210, 43 Stat. 475-76, June 7, 1924].[2] The Act authorized the construction of Coolidge Dam and water delivery systems to provide water to approximately 50,000 acres of Pima land within the boundaries of the Gila River Indian Reservation. The Act also authorized the participation of certain non-Indians to the extent of 50,000 acres. These non-Indian landowners are participants in the San Carlos Irrigation and Drainage District (SCIDD). The United

[2] "This measure is primarily for the restoration to the Pima Indians of their water rights along the Gila River, which have been gradually taken away from them by the white settlers above them appropriating the waters of the river." Senate Report #129, 6th Congress, 1st Session, Senate Committee on Indian Affairs, February 7, 1924.

States initiated the *Globe Equity* litigation in 1925 to secure a reliable water supply for the 50,000 acres of Pima land and 50,000 acres of non-Indian land within the San Carlos Indian Irrigation Project (SCIIP).

C. THE COMPLAINT AND AMENDED COMPLAINT

The initial complaint in the *Globe Equity* litigation was filed on October 2, 1925. The initial complaint did seem to indicate an intent to seek to quantify the water rights of the mainstem of the Upper Gila River and its tributaries. On May 24, 1934, G. A. Iverson (Special Assistant to the Attorney General) wrote a memorandum[3] to a Mr. Blair explaining the situation that led to filing an original complaint that was too broad. At page 2, he wrote:

> The original Bill of Complaint shows evidence of having been prepared hastily and without proper consideration either as to geographical areas or with any purpose of descriminating [sic] between rights of recognized standing and those apparently in conflict with the interests of the Government.

Beginning in 1926, the federal government questioned having the tributaries included in the *Globe Equity* litigation.[4] On December 5, 1927, the United States filed an amended complaint. See Appendix 2 of Phelps Dodge's Petition for Writ of *Certiorari*. At paragraphs 13(e) and (f) and 14(a), (b) and (c) the amended complaint sought the right to use "waters of the Gila River." Paragraph 15 of the amended complaint stated that each of the defendants

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[3] Memorandum of May 24, 1934, from G. A. Iverson to Mr. Blair, pages 1, 2, 3, 4 and 18 (Appendix 4)

[4] See August 4, 1926, letter from John Truesdell (Superintendent of Irrigation) to Mr. Edward Smith (Special Assistant to the Attorney General) (Appendix 5); September 23, 1926, letter to Mr. Edward Smith (Appendix 6); Letter of October 20, 1926, from Edward Smith to the Attorney General (Appendix 7)

> [c]laims some right to divert *water from the Gila River* as it flows between a line 10 miles east of the parallel to the dividing line between Arizona and New Mexico, and the confluence of the Salt River with the Gila River, *and after the following tributaries of the Gila River*, the San Francisco River, and the San Carlos River, the San Pedro River, and the Santa Cruz River, respectively, have joined, the main stream, and all but a few of said diversions being in the District of Arizona; or the said defendants claim some right to store the water of said river, or of some tributary thereof, either within or above the stretch of the same as just described. [Emphasis added.]

Phelps Dodge Petition for Writ of *Certiorari*, Appendix 2.

On December 6, 1927, the day after filing the amended complaint, the United States filed a brief[5] to the *Globe Equity* Court defining the limited nature and scope of the adjudication:

> This suit is one to adjudicate water rights *within a specified area of the Gila River.* That area is defined in the complaint and roughly embodies the stretch of the river extending from the lower or western end of the Gila River Indian Reservation, up that stream, to a line parallel with the boundary between the States of Arizona and New Mexico, but 10 miles east thereof. The idea is to settle rights of diversion along this stretch of the stream, *excluding*, however, *rights to divert water of the tributaries* – the Salt, which flows into the Gila on the western edge of the Gila River Reservation; the Santa Cruz, which reaches the Gila on the Reservation west of Florence; the San Pedro, which comes into the Gila above the Ashurst-Hayden diversion dam, some 10 miles upstream from Florence; the San Carlos, . . . comes into the Gila on the north within the site . . . the Coolidge reservoir; the San Francisco,

[5] Appendix 8

> which joins . . . also from the north above the Solmonville-Safford . . . below the Duncan Valley; the San Simone [sic], which is an extremely flashy wash stream and comes into the Gila from the south below the Duncan Valley, and all parts of the Gila River proper above the line mentioned as being some 10 miles within the State of New Mexico. [Emphasis added.]

D. PRE-*DECREE* PROCEDURES

Even before filing the amended complaint, which clarified the limited geographic scope of the *Globe Equity* litigation by excluding the tributaries, the United States planned for and executed the dismissal of parties who only diverted water from the tributaries of the mainstem of the Upper Gila River. On April 14, 1927, Edward Smith (Special Assistant to the Attorney General) filed a motion to dismiss certain defendants "without prejudice and without cost . . . for the reason that the said Bosquillas Land and Cattle Company and the San Pedro Water Users' Association are not necessary parties to the action."[6]

The attorneys for the United States kept working to correct the problems that arose from the inadvertent presence in the *Globe Equity* litigation of parties who only diverted water from the tributaries and were, therefore, outside the limited scope of the lawsuit. In 1932, Mr. Morton (attorney for the United States) authored a memorandum in which he wrote:

> It was conceived that the settlement, if effective and adequate, would involve a definition and determination of all existing rights in the Gila River *within the scope of the suit*, and the elimination of all parties who did not belong in the

[6] Appendix 9

> suit but happened to be there by reason of mistakes, inadvertencies or the like which occurred before our advent. [Emphasis added.][7]

On December 29, 1931, John Truesdell (an attorney and engineer who worked on both the *Globe Equity No. 59 Decree* and the *Orr Ditch Decree*) wrote to the attorney for Phelps Dodge Corporation and the Arizona Copper Company. He wrote:

> The geographical limits of the suit were set on the east with the idea that a line drawn from north to south ten miles east of the boundary between New Mexico and Arizona and excluding the tributaries, would include all of the diversions from the stream which ought to be covered by a suit of the sort the Government had in mind. It was considered, when the suit was brought, that diversions from the tributaries and from the main stream above the point indicated were not of such a character as to necessitate their determination. It was thought also that they might not have to be fixed or interfered with at all; and that in all events their handling should be left to the future.[8]

He continued:

> Your clients and others who divert from the tributaries or otherwise *outside the area meant to be covered by the suit*, were made defendants through inadvertence. It is our view, as we have already explained in conversation, that from our standpoint, and we think also from your own, they should be dismissed from the suit, and of course without prejudice. [Emphasis added.][9]

On March 26, 1934, Mr. Truesdell drafted a memorandum for the Commissioner of Indian Affairs and the

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[7] Appendix 10

[8] Appendix 11, page 1

[9] Appendix 11, pages 1 and 2

Solicitor of the Interior Department.[10] At page 1, he wrote: "In trying to settle this suit through the entry of a consent decree it may be necessary to ask the court to dispose of the case, through dismissals without prejudice or by some other means, as to certain parties who will not join in the general consent."

Beginning in late 1934, the United States requested and the Court ordered that water users on all tributaries to the mainstem of the Gila River be dismissed as being "outside the scope of said suit." All of the dismissals were without prejudice.[11] On March 30, 1935, Phelps Dodge Corporation entered into a stipulation with the United States, which was approved by the Court, whereby Phelps Dodge was dismissed from the *Globe Equity* litigation, without prejudice, because the Phelps Dodge interests were "outside the territorial scope of the suit as it was and is defined in the Amended Complaint" and because the dismissed defendants were included in the action "through inadvertence and mistake." *Globe Equity No. 59 Decree*, Article III, pages 8-9.

E. *GLOBE EQUITY NO. 59 DECREE* PROVISIONS

The provisions and language of the *Globe Equity No. 59 Decree* (Appendix 1) explicitly established that the *Decree* dealt only with quantifying the water rights of specific parties, as against each other, to use water from the mainstem of the Upper Gila River. The *Globe Equity No. 59 Decree* unequivocally confirmed that it did not deal with rights to use water from any of the tributaries to the mainstem of the Upper Gila River; and that it did not, in any way, grant or restrict the right of any party (whether to the *Decree* or not) to use the waters of those tributaries.

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[10] Appendix 12

[11] March 30, 1935, Motion to Dismiss (Appendix 13); March 30, 1935, Order Dismissing Certain Defendants (Appendix 14)

The preamble to the *Globe Equity No. 59 Decree* unambiguously affirmed that the *Decree*'s scope was strictly limited to those parties whose claims were still subject to determination, after all the dismissals without prejudice had occurred.

> That the plaintiff and the parties defendant whose claims and rights have been presented by answer or stipulation and remain for determination herein, have concluded and settled all issues in this cause as between plaintiff and said parties defendant, and as between said defendants and each of them and every other thereof, and mutually have agreed – * * * that such settlement should be embodied in and confirmed and made effective by way of the within decree of the Court in this cause defining and adjudicating their claims and rights as against each other in identical form and substance as hereinafter set forth;. . . .

The *Globe Equity No. 59 Decree* incorporated all or part of four smaller, older, localized decrees with even more limited geographic scope. The *Lockwood Decree* quantified water rights for the non-Indian lands that eventually became the San Carlos Irrigation and Drainage District, which is a component part of the San Carlos Indian Irrigation Project. Its table of rights and priorities was incorporated into the *Globe Equity No. 59 Decree*. The *Doan* and *Jenkes Decrees* quantified the water rights of lands diverting from the mainstem of the Upper Gila River above the San Carlos Apache Indian Reservation, and their tables of rights and priorities were also integrated into the *Globe Equity No. 59 Decree*.

The *Ling Decree* quantified the water rights of lands diverting from both the mainstem of the Upper Gila River, above the San Carlos Apache Indian Reservation, and from tributaries of the mainstem of the Upper Gila River. The portions of the tables of rights and priorities from the *Ling Decree* that dealt with rights to divert from the mainstem of the Upper Gila River were incorporated into the *Globe Equity No. 59 Decree*. The portions of the tables

of rights and priorities dealing with rights to divert from the tributaries were not included in the *Globe Equity No. 59 Decree* and must be enforced separately.

Articles I and III of the *Globe Equity No. 59 Decree* contain extensive lists of tributary water users who were dismissed from the litigation, without prejudice, including Phelps Dodge Corporation.[12] The *Globe Equity No. 59*

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[12] "That by the orders of this Court dated January 22, 1929, and March 11, 1930, this suit and the amended complaint herein, upon the motion of plaintiff, were dismissed as to defendants:

[names omitted]

it having been found and determined by the Court in that relation that they and each of them were *not proper or necessary parties defendant* in this cause; which said action of the Court in these premises hereby confirmed." [Emphasis added.] *Globe Equity No. 59 Decree*, Article I, page 6.

"That, upon the motion of the plaintiff, by Order of this Court dated March 30, 1935, this suit and the amended complaint herein *were dismissed without prejudice as to the following defendants*, to-wit:

Phelps Dodge Corporation; Arizona Copper Company;
[other names omitted].

Said action was had and taken in *pursuance of those certain five stipulations between the plaintiff and the defendants* above named through their solicitors of record, on file herein, wherein and wherefrom it appeared that said defendants and each of them had been named in this action and amended complaint, as parties defendant herein, through and by inadvertence, mistake and error, and that *their claims and rights, if any, were and are outside the scope of said suit* as same was and is outlined and defined in the amended complaint herein, and that they and each of them should be dismissed and eliminated from said cause, *although some of them had filed their answers setting up their claims and rights to the use of certain waters from some of the tributaries of the Gila River, and said answers were filed through mistake and a misunderstanding as to the scope of said cause as outlined* and defined in plaintiff's said amended complaint. *It was agreed in said stipulations that the dismissal of said defendants* should be accomplished upon motion of the plaintiff and Order of this Court as aforesaid, and that said Order should provide as in fact it does, as made and entered, of record herein that: *said action and dismissal should be without prejudice to said defendants* and each of them and/or to any of the other parties in this cause, or *to any claim or rights to the use of water which said defendants, or any of them,* or said other parties or

(Continued on following page)

Decree, as consented to by the parties and adopted by the court, did not quantify a single water right to any tributary of the mainstem of the Upper Gila River. The *Decree*'s schedule of rights and priorities lists only diversions from the mainstem of the Upper Gila River. Article V of the *Globe Equity No. 59 Decree* specifies "that the Gila River is the stream from which the water called for under each of said rights is and may be diverted."

Article XIII makes it clear that the *Decree* does not give rights or protections to non-parties to the *Decree*. The parties to the *Decree* agreed that they would not use the waters of the mainstem of the Gila River in a way that interfered with the prior rights (as established in the *Decree*) of other parties to the *Decree*.

> That each and all of the parties to whom rights to water are decreed in this cause (and the persons, estates, interests and ownerships represented by such thereof as are sued in a representative capacity herein), their assigns and successors in interest, servants, agents, attorneys and all persons claiming by, through or under them and their

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any of them, now or hereafter may have, *against the other or others, and that said defendants*, and each of them, *should be left as though they never had been named or made parties defendant herein*; which said action heretofore taken by the Court in the premises, is hereby confirmed, and the provisions herein recited in reference thereto are made a part of this decree to protect their rights in that respect." [Emphasis added.] *Globe Equity No. 59 Decree*, Article III, pages 8-9.

"That, upon motion of the plaintiff, by Order of this Court dated March 30, 1935, this suit and the amended complaint were *dismissed, without prejudice*, as to the following named defendants, to-wit:

[names omitted]

said action having been taken, because it appeared from said motion on file herein and the records; that said defendants and each of them were brought into the action by inadvertence and mistake and each was and *is not a necessary party to this action, for the reason that they have no interests or that they are outside the scope of the suit as defined* in the amended complaint herein. The action taken heretofore in these premises is hereby confirmed." [Emphasis added.] *Globe Equity No. 59 Decree*, Article III, page 10.

> successors, are hereby forever enjoined and restrained from asserting or claiming – as against any of the parties herein, their assigns or successors, or their rights as decreed herein – any right, title or interest in or to the waters of the Gila River, or any thereof, except the rights specified, determined and allowed by this decree, and each and all thereof are hereby perpetually restrained and enjoined from diverting, taking or interfering in any way with the waters of the Gila River or any part thereof, so as in any manner to prevent or interfere with the diversion, use or enjoyment of said waters of the Gila River or any part thereof, so as in any manner to prevent or interfere with the diversion, use or enjoyment of said waters by the owners of prior or superior rights therein as defined and established by this Decree;. . . .

F. THE GEOGRAPHIC SCOPE OF THE *GLOBE EQUITY NO. 59 DECREE*

The *Globe Equity No. 59 Decree* quantifies the rights of owners of approximately 140,000 acres of land to divert water from the mainstem of the Upper Gila River. It does not quantify the right of any party to divert water from any other source for use on any other land. The Gila River System and Source encompasses approximately 57,580 square miles or 36,851,200 acres of land. The *Globe Equity No. 59 Decree* quantifies the water rights of less than four-tenths of one percent of the lands within the Gila River System and Source. Put another way, the *Globe Equity No. 59 Decree* does not quantify the water rights of over 36,500,000 acres of land in the Gila River System and Source.

II. THE *ORR DITCH DECREE*

A. PRE-*DECREE* PROCEDURES

On March 13, 1913, the United States commenced a quite title action involving the waters of the Truckee River.

On July 25, 1914, the United States amended the original complaint, adding new parties and expanding the complaint to include the Truckee River "and its tributaries."[13] "*Orr Ditch* was intended by all concerned lawyers, litigants and judges, as a general all inclusive water adjudication suit which sought to adjudicate all rights and claims in and to the waters of the Truckee River and its tributaries."[14]

The *Orr Ditch Decree* was approved by the United States District Court on September 8, 1944. Prior to entry of the *Orr Ditch Decree*, many of the parties to the litigation entered into the Truckee River Agreement (Appendix 3) in anticipation of eventual entry of the *Orr Ditch Decree*. That agreement stated:

> WHEREAS, the parties hereto (other than the Conservation District) are users and/or diverters of water flowing from Lake Tahoe and/or in the Truckee River *and its tributaries in the State of Nevada* . . .
>
> WHEREAS, it is necessary for the accomplishment of the foregoing objects that additional facilities for the storage of the waters of the Truckee River *and its tributaries* be constructed . . .
>
> WHEREAS, the United States heretofore filed a suit . . . for the purpose of obtaining an adjudication of the rights of uses in the State of Nevada to the waters of the Truckee River *and its tributaries in the State of Nevada* . . .
>
> WHEREAS, the Conservation District was organized for the purpose (among others) of capturing, storing and conserving water of the Truckee River *and its tributaries* . . .

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[13] Findings of Fact, U.S. District Court for the District of Nevada, *United States v. Truckee-Carson Irrigation District*, December 8, 1977, Fact 7

[14] *Ibid.*, Fact 8

> WHEREAS, the Power Company is the owner of certain rights in and to waters of Lake Tahoe and the Truckee River *and its tributaries* . . .
>
> WHEREAS, the parties of the fifth part, herein or their predecessors in interest are defendants in said Truckee River Adjudication Suit and are owners of rights in and to waters of the Truckee River *and its tributaries* . . .
>
> WHEREAS, the carrying out of the provisions of this agreement will assist in conserving the waters of said Lake and River *and its tributaries* . . .

[Emphasis added.] Truckee River Agreement, page 1.

B. *ORR DITCH DECREE* PROVISIONS

The *Orr Ditch Decree* (Appendix 2) was a comprehensive water rights adjudication of the entire Truckee River System and Source and involved all, or virtually all, of the users of any water to the Truckee River or any of its tributaries. It was in the nature of a general adjudication.

In its preamble, the *Orr Ditch Decree* adjudicated the right "to divert and use, from the Truckee River *and its tributaries* and from the streams, springs, drain and waste water hereinafter mentioned." [Emphasis added.] At page 12, in the Irrigation Rights Section, the *Orr Ditch Decree* confirmed that the "parties . . . have acquired rights of appropriation in, and have diverted and appropriated from the Truckee River *and its tributaries*." [Emphasis added.]

At page 87, the *Orr Ditch Decree* contains an injunctive provision prohibiting the parties and their successors "from asserting or claiming any rights in or to the waters of the Truckee River *or its tributaries* or the waters of any of the creeks or streams or other waters hereinbefore mentioned." [Emphasis added.] That provision reiterates that "said parties . . . and all persons claiming by through or under them, are hereby perpetually restrained and enjoined from diverting, taking or interfering in any way with the waters of the Truckee River *or its tributaries*, or with waters of any of the creeks or streams, or with any of the other waters herein mentioned." [Emphasis added.] At

page 87, the *Orr Ditch Decree* further provides that the "owner or owners of each ditch or canal herein authorized to divert water from the Truckee River *or any of its tributaries*, or from any ditch or canal or other waterway receiving water therefrom [shall] install . . . a . . . headgate." [Emphasis added.]

C. THE GEOGRAPHIC SCOPE OF THE *ORR DITCH DECREE*

The Truckee River Basin drains approximately 1,872 square miles. The *Orr Ditch Decree* adjudicated all, or virtually all, of the then existing claims to use water anywhere in the Truckee River System and Source, from the Truckee River and its tributaries.

III. *THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE GILA RIVER SYSTEM AND SOURCE*

The Arizona State Legislature authorizes general adjudications of water rights through Arizona Revised Statutes § 45-251 *et seq*. A general adjudication is "an action for the judicial determination or establishment of the extent and priority of the rights of all persons to use water in any river system and source." A.R.S. § 45-251(2). River system and source "means all water appropriable under § 45-141 and all water subject to claims based upon federal law." A.R.S. § 45-251(7).

Under the McCarran Amendment (45 U.S.C. § 666) "[c]onsent is given to join the United States as a defendant in any suit (1) for the adjudication of rights to the use of water in a river system or other source." Consent to waiver of sovereign immunity by the United States is only given when the adjudication of the rights to the use of a river system is all-inclusive. *United States v. District Court in and for Eagle County, Colorado*, 401 U.S. 520, 91 S. Ct. 998, 28 L. Ed. 2d 278 (1971).

Prior to adoption of the general adjudication statutes, Arizona's water rights litigations were all small decrees

with limited geographic scope. The Arizona Legislature requires general adjudication courts to fold these pre-existing decrees into the overall determination of water rights for the entire river system and source. A.R.S. § 45-257(B) provides:

> The court, upon review of the report and in accordance with rule 53 of the Arizona rules of civil procedure, shall:
>
> 1. Determine the extent and priority date of and adjudicate any interest in or right to use the water of the river system and source, provided that when rights to the use of water or dates of appropriation have previously been determined in a prior decree of a court, the court shall accept the determination of such rights and dates of appropriation as found in the prior decree unless such rights have been abandoned.

When the *General Adjudication of All Rights to Use Water in the Gila River System and Source* is complete, it will have quantified the water rights of all claimants to use water throughout the Gila River watershed, including incorporating all existing decrees that previously quantified water rights for small localized reaches of the Gila River System and Source. When this process is complete, the *Gila River General Adjudication* will be a comprehensive water decree within the meaning of *Nevada v. United States*, 463 U.S. 110, 103 S. Ct. 2906, 77 L. Ed. 2d 509 (1983).

REASONS FOR DENYING THE CONDITIONAL CROSS-PETITION

I. THERE IS NO COMPELLING REASON TO GRANT *CERTIORARI*.

"Review on a writ of *certiorari* is not a matter of right, but of judicial discretion," and a petition for *certiorari* will be granted only for compelling reasons. Rule 10, Rules of the Supreme Court of the United States. Over the years, this Court has used a number of phrases to describe its criteria for accepting a petition for a writ of *certiorari*.

Whether the Court requires "special and important reasons," that the issues be "substantial in character," that the issue involve an "important federal question," or that the petition contain a "compelling reason," the rational is the same – the Court will not use its limited resources to make determinations that do not have a significant and material impact.

> A federal question raised by a petitioner may be "of substance" in the sense that, abstractly considered, it may present an intellectually interesting and solid problem. But this Court does not sit to satisfy a scholarly interest in such issues. Nor does it sit for the benefit of particular litigants. . . . "Special important reasons" imply a reach to a problem beyond the academic or episodic.
>
> * * *
>
> [I]t is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public, as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the Circuit Courts of Appeals.

Rice v. Sioux City Memorial Park Cemetery, 349 U.S. 70, 74, 79, 75 S. Ct. 614, 616, 619-620, 99 L. Ed. 897 (1955).

This petition for a writ of *certiorari* does not involve an issue of importance to the nation as a whole, to other state or federal courts, or to the vast majority of the citizens or water users in Arizona. The Arizona Supreme Court holding, that there is a mutality exception to *res judicata*, is consistent with *Nevada v. United States*. There is no question of law involved. The Petitioner simply believes that the Arizona Supreme Court made a factual error in its application of the legal principle. There are no compelling reasons to grant this petition.

II. THE ARIZONA SUPREME COURT CORRECTLY DETERMINED THAT THE *GLOBE EQUITY NO. 59 DECREE* DOES NOT BAR THE SAN CARLOS APACHE TRIBE FROM CLAIMING THE RIGHT TO USE WATER FROM THE TRIBUTARIES OF THE MAINSTEM OF THE UPPER GILA RIVER BECAUSE OF *RES JUDICATA*.

Claims in a current case are not subject to *res judicata* claim preclusion unless the previous litigation meets three criteria. "Res judicata applies when 'the earlier suit . . . (1) involves the same "claim" or cause of action as the later suit, (2) reaches a final judgment on the merits, and (3) involved identical parties or privies.'" [Citation omitted.] *Mpoyo v. Litton Electro-Optical Systems*, 430 F.3d 985, 987 (9th Cir. 2005).[15] "A judgment or decree among parties to a lawsuit resolves issues as among them, but it does not conclude the rights of strangers to the proceedings." *Richards v. Jefferson County, Alabama,* 517 U.S. 793, 797, 116 S. Ct. 1761, 1765, 135 L. Ed. 2d 76 (1996). "In order for a judgment in a prior suit to create a *res judicata* bar of a subsequent suit, the second suit must involve the 'same parties or their privies based on the same cause of action.' *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326, 99 S. Ct. 645, 649, 58 L. Ed. 2d 552 (1979)." *Alaska Sport Fishing Association v. Exxon Corporation*, 34 F.2d 769, 773 (9th Cir. 1994).[16]

Phelps Dodge Corporation was not a party, nor was it in privity with any party, to the *Globe Equity No. 59 Decree* when it was entered in 1935.[17] Phelps Dodge was

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[15] See also *Gilbert v. Board of Medical Examiners*, 155 Ariz.169, 745 P.2d 617 (App. 1987).

[16] See also *PFS v. Industrial Commission of Arizona*, 191 Ariz. 274, 278, 955 P.2d 30, 34 (App. 1997) ("A judgment establishes claim preclusion only between the parties and their privies.")

[17] Subsequent to the entry of the *Globe Equity No. 59 Decree*, Phelps Dodge Corporation acquired lands that have water rights under the *Decree*. As to these lands, which divert decreed water from the mainstem of the Gila River, Phelps Dodge Corporation is in privity and

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specifically dismissed from the *Globe Equity* litigation, without prejudice, pursuant to a stipulation with the United States. The party or privy requirement of claims preclusion is particularly strong in the case of a consent decree. The *Globe Equity No. 59 Decree* was a consent decree. See *United States v. Gila Valley Irrigation District,* 454 F.2d 219 (9th Cir. 1972) and *United States v. Gila Valley Irrigation District*, 31 F.3d 1428 (9th Cir. 1994).

In *Lorain NAACP v. Lorain Board of Education*, 979 F.2d 1141, 1148 (1992), the Sixth Circuit explained:

> The consent decree is "a strange hybrid of law." . . . It is at once "a voluntary settlement agreement which could be fully executed without judicial intervention" and "a final judicial order . . . plac[ing] the powers and prestige of the court behind the compromise struck by the parties." [Citation omitted.] Thus a consent decree is aptly described as "a settlement agreement subject to continued judicial policing. Since consent decrees and orders share many of the attributes of ordinary contracts, "they should be construed basically as contracts." [Citation omitted.]
>
> "Indeed, it is the parties' agreement that serves as the source of the court's authority to enter any judgment at all. . . . More importantly, it is the agreement of the parties, rather than the force of law upon which the complaint was originally based, that creates the obligations embodied in a consent decree." *Local Number 93, International Association of Firefighters, AFL-CIO, C.L.C. v. City of Cleveland*, 478 U.S. 501, 522, 106 S. Ct. 3063, 3075, 92 L. Ed. 2d 405 (1986).

"A consent decree binds only the consenting parties. *See, e.g., United States v. Ward Baking Co.*, 376 U.S. 327,

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receives both the benefits and responsibilities of the *Decree*. The claims brought by Phelps Dodge Corporation in this petition for a writ of certiorari deal with lands owned by Phelps Dodge Corporation that divert water only from tributaries to the Gila River.

84 S. Ct. 763, 11 L. Ed. 2d 743 (1964); *Hughes v. United States*, 342 U.S. 353, 72 S. Ct. 306, 96 L. Ed. 394 (1952)." *Keith v. Volpe*, 118 F.3d 1386, 1392 (9th Cir. 1997). A judgment by consent against a plaintiff does not operate as issue preclusion or claims preclusion against one not a party to the agreement. *Gall v. South Branch National Bank of South Dakota*, 783 F.2d 125, 127 (8th Cir. 1986). Phelps Dodge Corporation was not a participant in the *Globe Equity* consent decree. Phelps Dodge Corporation did not consent to be bound by the terms of the *Globe Equity No. 59 Decree*.

The Arizona Supreme Court correctly determined that claims preclusion requires "identity or privity between parties in the two suits." *In re The General Adjudication of All Rights to Use Water in the Gila River System and Source*, 212 Ariz. 64, 127 P.3d 882, 887 (2006). The Arizona Supreme Court also correctly determined that Phelps Dodge Corporation was not a party, or in privity with a party, to the *Globe Equity No. 59 Decree* and that Phelps Dodge Corporation was not a consenting party. The Arizona Supreme Court correctly determined that Phelps Dodge Corporation could not claim the affirmative defense of claims preclusion (*res judicata*) in the *Gila River General Adjudication*.

III. THE ARIZONA SUPREME COURT CORRECTLY DETERMINED THAT THE *NEVADA V. UNITED STATES* EXCEPTION TO THE MUTUALITY REQUIREMENT OF *RES JUDICATA* DOES NOT CAUSE THE *GLOBE EQUITY NO. 59 DECREE* TO BAR THE RIGHT OF THE SAN CARLOS APACHE TRIBE TO USE WATER FROM THE TRIBUTARIES OF THE MAINSTEM OF THE UPPER GILA RIVER.

In *Nevada v. United States*, *supra*, this Court crafted a narrow exception to the mutuality requirement of claims preclusion (*res judicata*). Phelps Dodge Corporation's allegation that the *Nevada* exception is applicable to the *Globe Equity No. 59 Decree* is incorrect. In *Nevada*, this Court referenced the general rule "that a prior judgment

will bar the 'parties' to the earlier lawsuit, 'and those in privity with them,' from relitigating the cause of action." 463 U.S. at 135, 103 S. Ct. at 2920. The Court noted "[w]hile mutuality has been for the most part abandoned in cases involving collateral estoppel, [citations omitted] it has remained a part of the doctrine of res judicata," 463 U.S. at 143, 103 S. Ct. at 2925, then stated "nevertheless, exceptions to the res judicata mutuality requirement have been found necessary, [citation omitted] and we believe that such an exception is required in this case." *Id.*

The exception to the mutuality requirement of *res judicata* arose from the comprehensive nature of the original *Orr Ditch Decree*. "[A]s the Court of Appeals determined, it 'was no garden variety quiet title action.'" *Id.* "As we have already explained, everyone involved in *Orr Ditch* contemplated a *comprehensive adjudication* of water rights intended to settle once and for all the question of how much of the Truckee River each of the litigants was entitled to." [Emphasis added.] *Id.*

The *Orr Ditch Decree* resulted from a comprehensive water rights litigation that was in the nature of a contemporary general adjudication.

> A quiet title action for the adjudication of water rights, such as the Orr Ditch suit, is distinctively equipped to serve these policies [finality of decisions involving land and water] because "it enables the court of equity to acquire jurisdiction of *all the rights involved* and also of *all the owners of those rights* and thus settle and permanently adjudicate in a single proceeding all the rights, or claims to rights, of all the claimants to the water *taken from a common source of supply*." [Emphasis added.]

463 U.S. at 129 n. 10, 103 S. Ct. at 2918 n. 10. In support of its requirement that a prior decree be comprehensive before a mutuality exception to *res judicata* can arise, this Court quoted from *Morgan v. Udy*, 58 Idaho 670, 79 P.2d 295 (1938): "[I]n the settlement of cases of this character every user of water on the stream *and all of its tributaries* in litigation are interested in the final award to each

claimant." [Emphasis added.] 463 U.S. at 139, 103 S. Ct. at 2923.

This Court concluded, "We agree with the Court of Appeals that under 'these circumstances it would be manifestly unjust . . . not to permit subsequent appropriators' to hold the Reservation to the claims it made in Orr Ditch." [Emphasis added.] 463 U.S. at 144, 103 S. Ct. at 2925. The *Orr Ditch Decree* allowed for an exception to the mutuality requirement of *res judicata* because the *Orr Ditch Decree* adjudicated the water rights to the entire Truckee River and all of its tributaries in Nevada. The *Orr Ditch Decree* was comprehensive.

In the McCarran Amendment, Congress waived the United States' sovereign immunity in certain water rights quantification cases. The precondition for waiver of sovereign immunity was that the proceedings had to be comprehensive general adjudications of all the water rights in an entire river system. Nine years before issuing its decision in *Nevada v. United States*, this Court emphasized the essential nature of comprehensiveness in general adjudications of water rights in entire river systems.

> The clear federal policy evidenced by that legislation [McCarran Amendment] is the *avoidance of piecemeal adjudication of water rights in a river system*. . . . This concern is heightened with respect to water rights, the relationships among which are highly interdependent. Indeed, we have recognized that actions seeking the allocation of water essentially involve the disposition of property and are *best conducted in unified proceedings*. . . . The consent to jurisdiction given by the McCarran Amendment bespeaks a policy that recognizes the availability of *comprehensive state systems for adjudication of water rights* as the means for achieving those goals. [Emphasis added.]

Colorado River Water Conservation District v. United States, 424 U.S. 800, 819, 96 S. Ct. 1236, 1247, 471 L. Ed. 2d 483 (1976).

The Ninth Circuit explained the McCarran requirements for waiver of sovereign immunity in water rights cases.

> There can be little doubt as to the type of suit congress had in mind. It was not a private dispute between certain water users as to their conflicting rights to the use of a stream system; rather it was the quasi-public proceeding which in the law of western waters is known as a "general adjudication" of a stream system; one in which the rights of all claimants on a stream system as between themselves are ascertained and officially stated.

State of California v. Rank, 293 F.2d 340, 347 (1961) (reversed on other grounds *sub nom. Dugan v. Rank*, 372 U.S. 609, 83 S. Ct. 999, 10 L. Ed. 2d 15).

Two years after *Nevada v. United States*, the Ninth Circuit denied a mutuality exception to *res judicata* because the water rights litigation was not comprehensive and encompassing.

> Because the 1945 consent decree was not a general adjudication of all water rights in the Yakima River Basin and did not adjudicate the treaty rights of the Yakima Nation,[FN4] appellants' res judicata argument also fails.
>
> FN4. The 1945 decree resulted from a suit filed by the United States in 1939, seeking a determination of their responsibilities to various contract holders in the Yakima Irrigation District. Neither side joined the additional parties that would have been necessary to a general adjudication, like the one involved in Nevada v. United States. [Citation omitted.] The final decree settled only the rights of the irrigation districts made party to the proceeding.

Kittias Reclamation District v. Sunnyside Valley Irrigation District, 763 F.2d 1032, 1035 (1985). See also *State of Washington Department of Ecology v. Grimes*, 121 Wash. 2d 459, 467, 852 P.2d 1044, 1048-1049 (1993) ("A general adjudication is a special form of quiet title action to

determine all existing rights to the use of water from a specific body of water.")

"The only proper method of adjudicating the rights on a stream . . . is to have all owners of lands on the watershed . . . in court at the same time." *People of the State of California v. United States*, 235 F.2d 647, 663 (9th Cir. 1956). The *Orr Ditch Decree* was a comprehensive water rights decree that determined all of the existing rights to use water from the Truckee River and all of its tributaries in Nevada (*i.e.*, the entire river system and source). The *Globe Equity No. 59 Decree*, on the other hand, was not intended to be a comprehensive water rights decree.

Prior to the adoption of the *Globe Equity No. 59 Decree*, the United States dismissed (without prejudice) any claims against any named defendants who took water only from tributaries to the mainstem of the Upper Gila River. Phelps Dodge Corporation entered into a stipulation whereby it agreed that it would be dismissed from the *Globe Equity* litigation (without prejudice) because it only took water from the tributaries to the mainstem of the Upper Gila River and, therefore, it was outside the geographic scope of the *Globe Equity* litigation.

Phelps Dodge Corporation willingly took advantage of its dismissal from the *Globe Equity* litigation, based on the fact that its water use from the tributaries was not within the geographic scope of the litigation – thereby ensuring that the ultimate decree would not be comprehensive. Now, however, Phelps Dodge Corporation argues that the *Globe Equity No. 59 Decree* should still be treated as if Phelps Dodge had actually participated. Having avoided the responsibilities of the *Globe Equity No. 59 Decree*, Phelps Dodge Corporation has no rights under the *Decree*.

The Arizona Legislature recognized the limited nature of the small localized water rights decrees issued by various courts before the adoption of the general adjudication statutes. A.R.S. § 45-257(B) requires the general adjudication court to incorporate the water rights quantified by the earlier, non-comprehensive water rights decrees into its final decree. If the *Globe*

Equity No. 59 Decree, the *Kent Decree*, or the *San Pedro Decision* were comprehensive water rights decrees, within the meaning of *Nevada v. United States*, they would be self-encompassing and it would not be necessary to include them in a broader decree.

The *Globe Equity No. 59 Decree* adjudicated the water rights of approximately 140,000 acres of the 36,851,000 acres of land in the Gila River System and Source. The *Globe Equity No. 59 Decree* quantified the water rights of less than four-tenths of one percent of the land within the Gila River watershed. The *Globe Equity No. 59 Decree* did not quantify the water rights to over 36,500,000 acres of the land within the Gila River watershed. When the *Gila River General Adjudication* is complete, it will have determined all of the existing rights to use water on any land within the Gila River System and Source. The final decree ultimately issued by the *Gila River General Adjudication* Court will be a comprehensive water rights decree that will be subject to the *Nevada v. United States* mutuality exception to *res judicata*.

The *Orr Ditch Decree* quantified the water rights of one hundred percent of the acres of land within the Truckee River System and Source (including all of its tributaries). The *Globe Equity No. 59 Decree* quantified the water rights of less than four-tenths of one percent of the acres of land within the Gila River System and Source, and did not include water rights from any of the Gila River's tributaries. A decree that quantifies the water rights of less than four-tenths of one percent of the water rights in an entire river watershed is not comprehensive, and is not subject to the mutuality exception to *res judicata*.

The Arizona Supreme Court correctly determined that the *Globe Equity No. 59 Decree* was not comprehensive because it failed to quantify water rights to any tributary of the Upper Gila River. "[B]ecause we have determined that the Decree itself precludes only additional claims to the mainstem, any assertion of preclusive effect by the Nonparties with respect to the waters of the tributaries

fails." *In re The General Adjudication of All Rights to Use Water in the Gila River System and Source*, *supra*, 127 P.3d at 902.

IV. THE ARIZONA SUPREME COURT CORRECTLY DECIDED THAT THE UNITED STATES PROPERLY SPLIT ITS WATER RIGHTS CLAIMS TO THE MAINSTEM OF THE UPPER GILA RIVER AND THE TRIBUTARIES TO THE MAINSTEM MADE ON BEHALF OF THE SAN CARLOS APACHE INDIAN RESERVATION IN THE *GLOBE EQUITY NO. 59 DECREE*.

Phelps Dodge Corporation asserts that it should be allowed to allege a claims preclusion (*res judicata*), arising from the *Globe Equity No. 59 Decree*, even though it stipulated to having its claims dismissed from the litigation without prejudice. The basis for this assertion is a claim that the United States did not "split" its claim to the use of the water of the tributaries from its claim to the use of the water of the mainstem of the Upper Gila River.

Phelps Dodge Corporation references cases that discuss the general principle that *res judicata* can attach to both claims that were brought and claims that could have been brought. See *Scoggin v. Schrunk*, 522 F.2d 436 (9th Cir. 1975); *United States v. Skokomish Indian Tribe*, 764 F.2d 670 (9th Cir. 1985); *Simmons v. New Public School District No. 8*, 251 F.3d 1210 (8th Cir. 2001); *California v. Randtron*, 284 F.3d 969 (9th Cir. 2002); and *May v. Parker-Abbott Transfer and Storage, Inc.*, 899 F.2d 1007 (10th Cir. 1990). The cases cited by Phelps Dodge Corporation actually support the Arizona Supreme Court's determination that the United States properly "split" its water rights claim to the tributaries from its water rights claim to the mainstem of the Upper Gila River.

Scoggin v. Schrunk confirms that, if a case involved two separate claims upon which the plaintiff was entitled to separate remedies, the first action did not bar recovery on the unjoined claim in the second action. 522 F.2d at 437. Arizona had dozens of small, localized water rights

decrees prior to the adoption of the general adjudication statute. None of the parties in any of those localized decrees brought action against every other water user in the Gila River System and Source. They chose to sue some water users (those in close proximity who took water from the same localized reach) and not sue other water users. There was no obligation to sue every other water user in the state. The United States' decision to bring judicial action against only part of the potential defendants was a permissible and common practice, which does not create any *res judicata* effect.

In *United States v. Skokomish Indian Tribe*, the Ninth Circuit held that *res judicata* did not prevent three Indian tribes from litigating issues between themselves when "it would not 'partially undo' the earlier decree." 764 F.2d at 671. The *Globe Equity No. 59 Decree* quantifies and allows enforcement of water rights as between specific parties who all take their *Globe Equity No. 59 Decree* water from the mainstem of the Gila River. Preventing Phelps Dodge Corporation, which was dismissed from the *Globe Equity* litigation without prejudice from claiming a *res judicata* effect from the *Decree* will not affect the rights of parties to the *Globe Equity No. 59 Decree* in any way, let alone "partially undo" the *Decree*.

Simmons v. New Public School District No. 8, recognized that a prior judgment does not have a claims preclusion (*res judicata*) effect on a subsequent litigation "when the parties to the first action 'have agreed in terms or in effect that the plaintiff may split his claim, or the defendant has acquiesced therein.'" 251 F.3d at 1214. With the entry of the *Globe Equity No. 59 Decree*, the parties agreed, pursuant to the express terms of the consent decree, that all parties who took water only from the tributaries would be dismissed without prejudice – thereby affirming the decision of the United States to "split" its claim to water from the tributaries from its claim to water from the mainstem of the Upper Gila River. Phelps Dodge Corporation "acquiesced therein" by stipulating to its dismissal from the litigation without prejudice.

Similarly, *California v. Randtron*, affirms that "a party can waive res judicata by consenting to split the claim into two suits." 284 F.3d at 975. Phelps Dodge Corporation waived any potential *res judicata* effect from the *Globe Equity* litigation when it consented to the United States' splitting of its claim to tributary water from its claim for mainstem water by stipulating to its dismissal without prejudice.

May v. Parker-Abbott Transfer and Storage, Inc., recognized that "consent decrees are of a contractual nature and, as such, their terms may alter the preclusive effects of a judgment." 899 P.2d at 1010. In that particular case, the consent decree was "absolutely silent as to the settlement's intended res judicata effect." *Id.* In *Globe Equity*, the consent decree is crystal clear in its intent that all parties with claims to use water only from the tributaries be dismissed without prejudice, and that these dismissed defendants receive neither benefits nor detriments from the *Decree's* provisions.

Phelps Dodge Corporation had, at one time, been a party defendant in the *Globe Equity* litigation. Phelps Dodge Corporation's inclusion in the litigation was a mistake, because the United States was only making claims to the right to use water from the mainstem of the Upper Gila River. The United States decided that it would not seek to quantify its rights to water from the tributaries. Phelps Dodge Corporation stipulated to the claims against it being dismissed without prejudice.

Phelps Dodge Corporation is asking this Court to determine that a dismissal without prejudice means that the plaintiff can never refile the action against the party who was dismissed. Phelps Dodge Corporation is asking this Court to prohibit parties from choosing to end a current litigation, without prejudice, with the option of reinstituting the litigation at a future date. This request runs counter to established common law.

A " 'dismissal . . . without prejudice' is a dismissal that does not 'operat[e] as an adjudication on the merits,' Rule 41(a)(1), and thus does not have a res judicata effect."

Cooter & Gell v. Hartmarx Corporation, 496 U.S. 384, 396, 110 S. Ct. 2447, 2456, 110 L. Ed. 2d 359 (1990). "Dismissal without prejudice indicates that judgment is not on the merits and will have no preclusive effect." *Jet, Inc. v. Sewage Aeration Systems*, 223 F.3d 1360, 1364 (Fed. Cir. 2000). See also *Santana v. City of Tulsa*, 359 F.3d 1241, 1246 (10th Cir. 2004); and *Mann v. Haigh*, 120 F.3d 34, 35 (4th Cir. 1997) ("the district court's earlier dismissal was made expressly without prejudice and, accordingly, has neither an issue nor a claim preclusive effect").

The inapplicability of *res judicata* to cases that are dismissed without prejudice is not a new legal doctrine. The law was the same in 1935, when Phelps Dodge Corporation stipulated to its dismissal from the litigation without prejudice. "A bill dismissed without prejudice is not a bar to a subsequent suit." *Robinson v. American Car & Foundry Co.*, 135 F. 693, 696 (7th Cir. 1905). "The cases are legion wherein a dismissal without prejudice has been construed as a reservation of a right to reinstate the proceeding." *Id.*

The United States utilized the most comprehensive, most effective, most open and notorious means of "splitting" its claim to the water of the tributaries and its claim to the water of the mainstem of the Gila River. The United States dismissed all of its claims against all of the parties who diverted water only from the tributaries. Phelps Dodge Corporation stipulated to the dismissal of all claims against its use of the water of the tributaries, without prejudice. Phelps Dodge Corporation was well aware that dismissal of the claims against it, without prejudice, meant that the claims could, and almost certainly would, be brought at some time in the future. That time is now.

The Arizona Supreme Court properly determined that "parties to a consent decree can agree to limit the decree's preclusive effects." *In re The General Adjudication of All Rights to Use Water in the Gila River System and Source*, *supra*, 127 P.3d at 888. The Arizona Supreme Court was correct in its determination that a "dismissal without prejudice is a dismissal that does not operate as an adjudication

upon the merits and thus does not have a res judicata effect." 127 P.3d at 892. The Arizona Supreme Court correctly determined that Phelps Dodge Corporation has no right to assert a claims preclusion (*res judicata*) effect, arising from the *Globe Equity No. 59 Decree*, in the *Gila River General Adjudication*.

CONCLUSION

With regard to its lands that take water from the tributaries, Phelps Dodge Corporation is not now, and never has been, a party to the *Globe Equity No. 59 Decree*. With regard to the lands and water rights claims that are the subject of this petition for writ of *certiorari*, Phelps Dodge Corporation is not in privity with any party to the *Globe Equity No. 59 Decree*. Phelps Dodge Corporation's failure to be a party, or in privity with a party, to the *Globe Equity No. 59 Decree* is fatal to its claim of claim preclusion (*res judicata*) in the *Gila River General Adjudication*.

Unlike the *Orr Ditch Decree*, the *Globe Equity No. 59 Decree* is not a comprehensive water rights adjudication of all the rights of all the parties to the use of all the water of the entire river system and source. Phelps Dodge Corporation knew that the *Globe Equity No. 59 Decree* was not comprehensive, and that it was not intended to be comprehensive when it was entered in 1935. Phelps Dodge Corporation actively worked to ensure that the *Globe Equity No. 59 Decree* would not be comprehensive by stipulating to the dismissal of the action against its claims to the waters of the tributaries.

A decree that quantifies less than four-tenths of one percent of the land within a watershed is not comprehensive, as is required before the *Nevada v. United States* exception to the mutuality requirement of *res judicata* can be imposed.

The United States properly "split" its claim to the waters of the tributaries and its claim to the waters of the mainstem of the Upper Gila River by dismissing from the litigation, without prejudice, all party defendants who took water only from the tributaries. Dismissal without prejudice

has no claims preclusion (*res judicata*) effect. Following a dismissal without prejudice, the plaintiff has the right to refile the action. Phelps Dodge Corporation consented to the United States' decision to split the claims when Phelps Dodge stipulated to being dismissed from the litigation without prejudice.

Respectfully submitted,

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APPENDIX 1

Globe Equity No. 59

In the District Court of the United States In and for the District of Arizona

THE UNITED STATES OF AMERICA

vs.

GILA VALLEY IRRIGATION DISTRICT, ET AL.

DECREE ENTERED JUNE 29, 1935

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This cause came on to be heard at this term, and thereupon it was shown to the court:

That the plaintiff and the parties defendant whose claims and rights have been presented by answer or stipulation and remain for determination herein, have concluded and settled all issues in this cause as between plaintiff and said parties defendant, and as between said defendants and each of them and every other thereof, and mutually have agreed – all as evidenced, for plaintiff, by the assenting signatures, endorsed at the end hereof, of its solicitors of record and the Attorney General and Secretary of the Interior of the United States, and for said defendants, by the assenting signatures, likewise endorsed at the end hereof personally, or of their several solicitors of record – that such settlement should be embodied in and confirmed and made effective by way of the within decree of the Court in this cause defining and adjudicating their claims and rights as against each other in identical form and substance as hereinafter set forth; and the Court upon consideration thereof and of the record herein as to the disposal of the parties defendant who have been separated from the cause, and being duly informed in said premises,

doth find, order, adjudge, and declare its decree herein to be as follows, namely:

I

That by the orders of this Court dated January 22, 1929, and March 11, 1930, this suit and the amended complaint herein, upon the motion of plaintiff, were dismissed as to defendants:

John S. Abbott; Charles A. Adams; A. Allen; Francisco Alvidrus; Paul Beeker; George P. Bennett; Mary E. Benscoe; Bentz Brothers; J. W. Bentz; George A. Bigler; C. O. Billingsley; Est. of Paul Blackmore; B. A. Boyles; Sam Brown; Newton Bradley; Juan Cachon; Ella Carpenter; J. C. Carpenter; Rachel Carr; John Castro; Chono Celayo; Tim Chapman; Ben M. Crawford; W. J. Davis; G. H. Dinsmore; John Eastman; Dud Eldridge; J. F. English; Helen T. French; Mattie M. Hall; Hawkins & Simms Milling & Irrigating Company; A. W. Heath; Mrs. Clara Hicks; James Henshall; Jacob Hildebaugh; J. I. Hinkle; J. P. Hinkle; A. M. Hooper; Roger Hoopes; J. G. Hopkins; R. T. Horrell; Arthur Houser; S. L. Johns; Bennet J. Kellner; Ernest F. Kellner; H. D. Kepper; J. H. Kerby; J. H. Lacey; John Laffey; Louise LeBaron; James LeHoxi; W. A. Leonard; Mrs. Frank Lewis; J. W. Lightfoot; George Lobb; Gordon McLean; B. Mately; Rafael Memos; Manrico Mijia; Sidney B. Moeur; E. C. Montgomery; Charles Morrell; Reputhio Moriz; George Olmstead; Lillian W. Pearl; James A. Perkins; Marie C. Peters; S. K. Phillips; Frederick M. Putnam; John Ralston; Gabriel Robles; H. N. Russel; Victoriana Ruiz; J. Ryan; H. Salazar; Manuel Serano; S. Schultz; Charles H. Vann;

Walter Shayeb; Estate of Charles R. Sligh; Nolberto Subia; Edward H. Sinclair; George Thompson; Jose Tonis; J. G. Turney; Manual Urtiaga; Elijah Urtiaga; Judd Webster; George W. Wells; and O. H. Brown;

W. L. Cauthen; W. R. Elliott; William Jackson; J. F. Kepper; D. T. McGuire; and H. B. Sweeting;

it having been found and determined by the Court in that relation that they and each of them were not proper or necessary parties defendant in this cause; which said action of the Court in these premises hereby confirmed.

II

That by way of amended complaint, as filed herein on the 5th day of December, A.D., 1927, and orders of this Court bringing in new parties defendant under said amended complaint,

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this suit and the amended complaint herein were directed against each and all of the defendants named below, to-wit:

D. Bertoglio; Beatrice Perry; and H. B. Wiggins;

Also, James R. Pruett; Antonio Specia and H. B. Summers;

Also, American Smelting and Refining Company; A. A. Anderson; John N. Anderson; Mary A. Antenoll; Estate of Walter Baitty, Homer H. Martin, Administrator; J. W. Baker; Henry Bamesberger; Ruth R. Barham; Estate of Thomas

Barrett, Dan T. Peart, Administrator; Pansy Kenower Bartlett; Madelene Bassler; Albert C. Becken; Grace R. Becken; Charles F. Bennett; Jarvus D. Bennett; Francis D. Blair, Clifton Bogard; C. D. Bradley; Ida M. Bradley; John R. Bradshaw; Esther A. Brockway; Ira S. Brayton; Marshall F. Brockway; Charlotte Hall Brown; Elizabeth Brown; J. P. Brown; Sarah B. Brown; Thresa Hall Brown; Estate of W. F. Brown, P. D. Overfield, Administrator; John J. Buggs; John W. Burris; Lee Robinson Burris; L. B. Cadwell; Casa Grande Valley Bank; Mike Celaya; Estate of W. B. Charlton, John E. Charlton, Administrator; Albert J. Christensen; Edith M. Clemans; Hazel H. Clemans; Winnefred W. Clemans; W. J. Clemans, Jr.; W. P. Clements; Mrs. Charles E. Cleveland; Inez H. Conrad; Thomas A. Crow; Jennie Davidson; Maurice Dodd; Tracy Eastman; Christobell G. Ellis; Joe Erny; Jesus Espinosa; Jose T. Espinosa; Salvador S. Feliz; C. A. Fitzgerald; James D. Freeman; Fidelity Savings & Loan Association; First National Bank of Florence; May E. Furback; Kathrina Gack; Estate of George F. Gallagher, Robert Denton, Administrator; L. D. Gamble; M. L. Gilbert; George F. Graham; Nellie R. Gochenouer; Joseph Greene; Virginia Hales; John Hamilton; A. T. Hammons, Receiver; May Catlin Hansen; J. B. Harsha; Vernon W. Havins; John Hendricks; W. E. Herron; Edith B. Jamieson; James C. Jayne; E. R. Johnson; Richard J. Jones; Julia R. Julian; Fred R. Kenover; Ola R. Kenover; H. B. Klingenberg; Anna E. Kochsmeier; Frederick Kochsmeier; Henry Kochsmeier, Sr.; Henry D. Kochsmeier; Maria Kochsmeier; Gustav K. Kratzka; James J. Kruse; J. E. LaFleur; W. W. Lane; Dirk Lay; Elizabeth L. Lay; Estate of Lola W. Lee, Dan T. Peart, Administrator; David A. Little; Minnie Lobb; Estate of

W. H. Lonergan, T. A. Lonergan, Administrator; May H. McBennett; A. L. McCann; Alpha E. McCann; Minnie M. McCann; James K. McCarty; Carrie McDowell; M. W. McDowell; Gertrude B. McGee; Glen C. McKenzie; Elizabeth P. McMurray; Melanie Mendell; Rita Marquez; Ivey Marshall; Ralph K. Marshall; Joe Marta; David Omer Martin; Ben B. Mathews; Josiah J. Maxey; R. D. Melick; Lillian C. Merchant; John B. Michea; J. L. Mills; Mary L. Miles; R. M. Miller; Lillian I. Mitchell; Henry G. Moeller; Fayette Moore; Ethel M. Moorehouse; H. W. Moorehouse; Vashti B. Moorehouse; Margarete L. Murphy; J. S. Murry; C. H. Niemeyer; Lillian O'Connor; Olive J. O'Connor; Lewis Olesen; Antonio S. Padilla; Florence Palamounter; Howard G. Palamounter; Lee Patrick; Roy F. Patrick; George W. Pattee; Harriet E. Pattee; Estate of Earl P. Patterson, Thomas D. Derry, Administrator; Willie K. Pearson; Emma Pennington; Walter J. Pennington; Amandus C. Peters; Addie Phillips; Margaret E. Pierce; Pinal Investment Company; Frank Pinkley; Eli E. Piper; W. M. Pollock; Grace P. Pottebaum; Robert H. Pottebaum; Estate of W. Y. Price; Mrs. W. Y. Price; Alice M. Prouty; Lloyd W. Prouty; W. Scott Prouty; Edwin Ralph; Henderson H. Raybourn; A. V. Read; Martin J. Reed; Fern M. Richardson; H. G. Richardson; S. H. Rorabaugh; Ralph M. Rounds; Andris V. Salazar; Christiana Salazar; John Saxman; B. W. Scholtz; Estate of Elizabeth Schultz, Fred T. Armstead, Administrator; William J. Schultze; Charles M. Schwab; Emma B. Schwarm; Clara C. Seagoe; George P. Sellers; Mary S. Scheafe; Elizabeth Shannon; Mary L. Shannon; Chloren B. Shiflet; John Sigfrid; Carrie S. Sigler; George W. Sigler; J. O. Simmons; Southern Arizona Bank & Trust Company; Herbert G. Sparks; C. C. Springer;

Mary E. Stevens; T. V. Stokes; Walter W. Stovall; Tim Sullivan; Surety Abstract & Realty Company; J. C. Swan; Estate of John W. Sweeney, Sam Sweeney, Administrator; Chas. F. Tantlinger; S. E. Tellyer; Frank A. Thackery; Augusta Thor; Fred Thor; Mae Tiffiny; Mrs. Billie

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Treat; S. Louise Trekell; Mary E. Truman; E. S. Turville; Mrs. A. C. Urban; F. A. Urban; Valley Bank of Phoenix; Calbert L. Vance; Viola C. Vance; Ed G. Van Haren; Gregorio Vasquez; Augustine Villar; Joe Villar; George P. Walker; Harry Ward; Roy S. Ward; C. E. Waterbury; Josie Waterbury; Katie E. Weaver; Adolphus Weyrick; Natalia M. White; Dorcas E. Whitlow; Josephine R. Wills; Sophia Wind; Jessie P. Woody; Soren Yensen; and Elsie DeWolf Zellweger;

That original process thereunder by way of Subpoena Ad Respondendum, or by Court Order under section 57 of the Judicial Code, was duly issued and served, with a copy of the amended complaint, upon each of the aforenamed defendants, and each of said defendants failed and neglected to make or file an answer or otherwise defend or make a plea to said amended complaint as required by Rule 16 of the Rules of Practice for Courts of Equity of the United States; that orders taking the amended complaint as confessed by them and each of them were duly made herein and entered in the Order Book on the 25th day of November, 1929, the 11th day of March, 1930 and on the 19th day of December, 1934, in the office of the Clerk of this Court: each such order being so made and entered after the failure of each of the particular defendants named therein to make answer, defense or other plea as aforesaid; that no proceeding has been taken or initiated

by them or any of them since the entry of said orders, and each thereof; and said defendants and each and every of them are now and remain in default of any answer, defense or other plea herein, and more than 30 days have elapsed since the entry of said orders and each thereof.

That under the orders Pro Confesso aforesaid, the amended complaint is taken as confessed, and it is ordered, adjudged and decreed herein, that the defendants above named in this article and each thereof, as against any of the parties plaintiff or defendant in this cause, their assigns or successors in interest, or their rights as herein decreed; that said defendants and each of them have no right to the use of water from the Gila River as against the parties to this action other than those set up in this decree, and they and each of them and, their heirs, executors, administrators and assigns or successors in interest are debarred and estopped from asserting or claiming any different or other, right, title or interest in or to the water or the use of any water from the Gila River as against the rights of the plaintiff and those of the defendants determined and set up in this decree.

III

That, upon the motion of the plaintiff, by Order of this Court dated March 30, 1935, this suit and the amended complaint herein were dismissed without prejudice as to the following defendants, to-wit:

S. B. Blake; Cluff & Mitchell; Colvin-Jones Consolidated Ditch Co.; John H. Davidson; W. P. Ferris; Jose Gonzales; T. Hinton; Layton & Ison; James Layton; E. D. McEuen; Roy A. Martin; Ed Moody; J. C. Norton; George A. Olney; Asa

Packard; N. E. Platt; W. E. Posy; S. A. Powell; Pursley & Nash; Mrs. Mary Reynolds; Bert E. Rose; Smithville Extension Canal Company; Cinaoo Telles; E. L. Tidwell; Louis Voelokel; W. J. Walton; T. W. Wamslee; Estate of Webster, F. A. Webster, Administrator; Estate of J. R. Williams; B. D. Wilson; Young & Ridgway;

Also, Bank of Duncan; D. E. Barlow; J. W. Becker; Billingsley Canal Company; R. T. Bishop; Harry H. Boyer; Burcher Ditch Company; Estate of W. C. Cheatham; Edward C. Cole; Consolidated Canal Company; J. H. T. Cosper; Cosper-Wilson Canal Company; Ethel M. Cunningham; E. C. DeMoss; Double Circle Cattle Company; Thomas Edwards; Bonnie Elrage; Mangus Elrage; Mrs. Geo. J. Filleman; J. J. Filleman; Franklin Canal Company; Fred J. Fritz; Mrs. Katie Fritz; Furr & Blain; Harve K. Gatlin; Gila Ranch Company; Greenhorn Ditch Company; Greenhorn Irrigating Canal; County of Greenlee; O. C. Greenwell; Ole Hagan; William F. Hagan; S. P. Hale; Francelle Heywood; Mrs. Clara Hicks; County of Hidalgo; Hill Ditch; Francis M. Hodges; Lettie

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F. Hunt; M. J. Jensen; M. L. Jensen; D. L. Johnson; F. E. Johnson; R. S. Johnson; A. L. Jones; J. H. Jones, Sr., Estate; Martin & Pearson Ditch; Martin & Pearson Irrigating Canal Company; Arven Mortensen; T. J. Nations; G. O. Payne; C. V. Peery; T. M. Peters; Dell M. Potter; Fred Powell; R. Richardson; Romney Brothers; Romney & Lunt; Rucker Ditch; School District No. 30; J. M. Smelley; A. F. Smith; The Estate of Spoon, Ira L. Spoon, Adm.; A. G. Stevenson; W. R. Stevenson;

Sunset Irrigating Canal Company; D. H. Thompson; W. Plune Tibbets; H. P. Trainor; Virden Ward; Ward & Courtney Dam Company; T. M. Williamson; State of New Mexico;

Also, Phelps Dodge Corporation; Arizona Copper Company;

Also, Morenci Water Company;

Also, Aztec Mutual Canal Company; James Leroy McCarthy; Richard E. Geyler; Frank C. Elwell.

Said action was had and taken in pursuance of those certain five stipulations between the plaintiff and the defendants above named through their solicitors of record, on file herein, wherein and wherefrom it appeared that said defendants and each of them had been named in this action and amended complaint, as parties defendant herein, through and by inadvertance, mistake and error, and that their claims and rights, if any, were and are outside the scope of said suit as same was and is outlined and defined in the amended complaint herein, and that they and each of them should be dismissed and eliminated from said cause, although some of them had filed their answers setting up their claims and rights to the use of certain waters from some of the tributaries of the Gila River, and said answers were filed through mistake and a misunderstanding as to the scope of said cause as outlined and defined in plaintiffs said amended complaint. It was agreed in said stipulations that the dismissal of said defendants should be accomplished upon motion of the plaintiff and Order of this Court as aforesaid, and that said Order should provide as in fact it does, as made and entered, of record herein that: said action and dismissal should be without prejudice to said defendants and each of

them and/or to any of the other parties in this cause, or to any claim or rights to the use of water which said defendants, or any of them, or said other parties or any of them, now or hereafter may have, against the other or others, and that said defendants, and each of them, should be left as though they never had been named or made parties defendant herein; which said action heretofore taken by the Court in the premises, is hereby confirmed, and the provisions herein recited in reference thereto are made a part of this decree to protect their rights in that respect.

That, upon motion of the plaintiff, by Order of this Court dated March 30, 1935, this suit and the amended complaint were dismissed as to the following named defendants, to-wit:

> A. P. Angle; Arizona Hercules Copper Company; Josephine Burks; Simon Cisneros; Louis Gilson; Gold Bullion Mining Company; Charles J. Gross; John M. Hatfield; G. H. Head; London Gila Mining Company; Theodore Lujan; Katherine S. Mellon; Luis Santos; and Manuel Tibbets;
>
> Also, Frisco Placer Mining Company; Anna M. Gale; A. A. Larona; Brotten Lunt; Jose Sanchez; William Whelin; Harry C. White; and the White Mountain Lumber Company.

Said action having been taken for the reason that; from said motion on file herein it appeared that said defendants and each of them has no interest in the issues of this action and that none of them were or are necessary parties defendant; the action heretofore taken in these premises is hereby confirmed.

That, upon motion of the plaintiff, by Order of this Court dated March 30, 1935, this suit and the amended

complaint were dismissed, without prejudice, as to the following named

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defendants, to-wit:

> Castilo Ditch; Thomas Crabtree; Ed Elrage; Dale M. Garden; Jensen Brothers; J. B. Johns; F. Vernon Jones; William L. Keppler; Randall Lunt; Vernon Lunt; M. J. McClaren; Hugh McKeen; William Milligan; Alfred Mortenson; Nichols & Company; Tomas Ponce; Serano R. Sexton; Ernest D. Shade; C. M. Short; Frank Shiver; A. R. Snyder; S. Stewart; T. L. Stockton; J. A. Suydam; Luther T. Sweeting; Miss E. A. Swofford; O. F. Swofford; Bonnie Ulrage; J. F. Wardner; and W. F. Willis;

said action having been taken, because it appeared from said motion on file herein and the records; that said defendants and each of them were brought into the action by inadvertance and mistake and each was and is not a necessary party to this action, for the reason that they have no interests or that they are outside the scope of the suit as defined in the amended complaint herein. The action taken heretofore in these premises is hereby confirmed.

That at the same time and in the same order this suit and amended complaint were dismissed as to the following defendants, to-wit:

> W. B. Barham; J. M. Biddle; Mary W. Bradshaw; Jackson Branaman; Martha W. Brockway; Fred D. Carpenter; E. D. Chandler; Dessa Harbison; Jim Harper; Jacob Helfenstein; A. S. Henry; Mrs. Alice Huntsman; John A. Johnson; A. E.

Keoler; T. A. Lonergan; Clara B. McFarland; Gordon McMurray; William C. McNatt; R. B. Maley; Martha M. Merrill; Estate of Lizzie B. Murphy; W. F. Murphy, Sr., Administrator; John Nash; Ansel Phelps; Georgiana Phelps; George W. Sheerer; Chas. D. Stahlberg; Glodine Stahlberg; Phoebe E. Templeton; Estate of Jose Vasquez, Charles F. Bennett, Administrator; Albert Warren; Alice E. Nixon; Virginia Griffin; Horace J. Johnson; Mary Johnson; Lula O. Lockerd; and John C. Swan;

said action having been taken and had, for the reasons shown in said motion, to wit: that each of said defendants had been brought in as parties defendant through inadvertance and mistake or that they had transferred their interests to others who are parties defendant herein, and they are necessary parties defendant herein. The action heretofore taken in these premises is hereby confirmed.

That upon motion of the plaintiff, by Order of this Court, dated March 30, 1935, this suit and the amended complaint herein were dismissed, as to the following defendants, to-wit:

Henry W. Blough; John F. Brown; Fred E. Gack; John MacGregor Goodale; Frank E. Hamilton; Frederick K. Kratzka; J. T. Lewis; James F. McManis; George W. Morrell; John O'Brien; Margaret T. Randall; Jennie Roberts; Earl F. Smiley; Ole H. Smith; A. W. Sydnor; M. E. Templeton; Bert Vidans; Fannie Wallrich; W. G. Williams; S. H. Wynn;

said action having been taken and had, for the reasons shown in said motion on file herein – as well as from the records herein, that; said and every of the last named parties are not necessary parties defendant herein; that

their lands are embraced within and constitute a part of the San Carlos Irrigation and Drainage District; that each of them has entered into a contract with the United States, in relation to his land and water rights therefor and that because of said contractual relationship his lands have been and are designated as a part of the United States San Carlos Indian Irrigation Project; that their and each of their interests have been and are represented in this cause by said District and the plaintiff and that their and each of their water rights have been and are set up and provided for in this decree. The action taken heretofore by the Court in these premises is hereby confirmed.

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That, upon motion of the plaintiff, by Order of this Court on the 30th day of March, 1935, this suit and the amended complaint were dismissed as to the defendants: Estate of Della Tharp, Edward Tharp, Administrator; Estate of James Tharp, Edward Tharp, Administrator; said action was taken and had pursuant to said motion on file herein and for the reasons therein given that; the lands and water rights thereunto belonging were by said parties covered into the Florence-Casa Grande Project by contract with the United States, the plaintiff herein; that their and each of their interests have been presented to the Court by the Florence-Casa Grande Water Users Association and their and each of their interests have been and are represented herein by the United States; that they are not necessary parties defendant in this action; that their and each of their interests are and have been set up and provided for in this decree and given their proper place in the Priority Schedule, a part of this decree, which said action is hereby confirmed.

That, upon motion duly made, by Order of this Court dated April 3, 1935, the Kennecott Copper Corporation, a corporation, was made a party defendant herein, by substitution, as the successor in interest of the Nevada Consolidated Copper Company and the Ray Consolidated Copper Company. The action heretofore taken in these premises is hereby confirmed.

IV

That the following named defendants own land as follows: Estate of Dora M. Clark, the NW1/4, Section 22, Township 6 South, Range 7 East, Gila and Salt River Base and Meridian; Margaret P. Brown, the SW1/4, Section 15, Township 6 South, Range 7 East, Gila and Salt River Base and Meridian; and H. H. McNeil, the N1/2? SE1/4, Section 9, Township 5 South, Range 9 East, Gila and Salt River Base and Meridian; and Otis J. Baughn, 80 acres of land in the N1/2? SW1/4 of Section 8, Township 6 South, Range 8 East, Gila and Salt River Base and Meridian; and that they and each of them in the past and prior to this decree, have made diligent and extensive efforts and have expended sums of money in an effort to secure water from the Gila River for the irrigation of their and each of their lands, but notwithstanding said efforts and expenditures, they and each of them were and have been unable to make use of said water upon their said lands and have not acquired any right to the use of said water from the Gila River upon their said lands, and that they and neither of them has a right to use water from the said river for the irrigation of their said lands as against the parties to this cause.

V

That each of the parties named in the Schedule of Rights and Priorities set out below and made part hereof (hereinafter for convenience often referred to as the Schedule or Priority Schedule), in proper person or in the representative capacity indicated, has acquired and owns the right or rights accredited to him in said Schedule; that the Gila River is the stream from which the water called for under each of said rights is and may be diverted; that the point of such diversion, the name or description of the dam, canal, or other appliance through which said diversion is accomplished and said waters are carried to the lands through the irrigation of which said right has been acquired, together with – as to individual defendants, and plaintiff where the appropriation rights of others have been conveyed to it as hereinafter further described – the description of said lands and the number of irrigable acres thereof in each quarter or quarter-quarter section, or lot or lots as the case may be, to which said right applies, are as stated in said schedule opposite the name of each of said parties in appropriately designated columns thereof; that the priority date of each of said rights is as stated for each owner in the column so designated, and such owner is entitled thereunder and as of the date of said priority to divert from the natural flow of the stream, at the point of diversion so designated and to carry and convey to, and apply to beneficial use upon, said lands for the irrigation thereof, during each irrigation season, a total amount of water not exceeding 6 acre feet per each acre of said lands, which said amount shall not be diverted from the stream at any time during said season at a greater rate

than one-eightieth (1/80) of a cubic foot per second for each acre of said lands, except as hereinafter provided; that the right of direct diversion from the natural flow of the stream for each of said parties, therefore, may be readily calculated, for the area then being irrigated, as follows:

No. of acres times 6 = Total allowable diversion in acre-feet during each irrigation season;

No. of acres times 1/80 = Rate of diversion in cubic feet per second which shall not be exceeded in making said draft;

provided, however, that the water commissioner hereinafter provided for, in order to take proper advantage of sudden freshets or other periods of more plentiful natural flow in the stream, may authorize and provide for, and as to the lands of defendants above the San Carlos Reservoir shall permit, when no injury will result to others not being so accommodated, diversions therefrom under said rights at a greater rate than 1/80 of a cubic foot per second, but subject to the explicit condition that the total diversion for the lands involved shall not exceed during the irrigation season the said total of 6 acre feet per acre; that the right of each of said parties, based upon the total area involved in each instance, is stated in acre feet per irrigation season, and in cubic feet per second (maximum rate of diversion as aforesaid), opposite the names of said party, respectively in the last two columns of said schedule; that this right for each of said parties entitles him to a first and prior call to the extent thereof upon the available natural flow of the stream as against other whose rights as listed in said Schedule bear later dates of priority than his own, while others, when their rights have earlier dates of priority than his, have a first and prior call to the extent thereof upon said stream flow as against him; that each of

said rights is gauged by and limited to the amount of water which has been and can be beneficially diverted and applied to the irrigation of said lands; that this quantity is determined and adjudged herein to be the amount in acre-feet per acre for the irrigation season stated above, which shall include and be charged with all conveyance loss from the point of diversion from the stream to the lands; that said lands require that there be applied thereto, and therefore diverted from the stream, somewhat larger amounts of water in the hotter summer months of the irrigation season than at any other times therein, of which account is taken by providing herein for a considerably larger diversion right than would be required at constant even flow to produce 6 acre-feet per acre during each irrigation season; that where the figures and data given for a single water right priority are set opposite the names of more than one defendant in said Schedule, each of the same is deemed and held to have an undivided interest in the whole there described under such mutual contractual relations as may obtain between them, which are not defined or determined in this decree; that certain of the rights accredited to plaintiff in said Schedule may be classified as rights by purchase in that they were acquired by the United States by way of conveyances from the owners of the private lands through the irrigation of which they were acquired, said conveyances being made by way of the "Agreement of Landowners to induce the Secretary of the Interior to undertake the Florence-Casa Grande Irrigation Project, and for the building and operation thereof in case the same is declared feasible" and the "Landowners Agreement with the Secretary of the Interior, San Carlos Project, Act of June 7, 1924," entered into by the United States and such owners, which were executed and put into effect under and in connection with the

Florence-Casa Grande and San Carlos Projects; that these rights, having priorities in great number, ranging from the year 1868 to 1914 inclusive, are set down in their

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order in said Schedule and totaled for each year under the name of the United States, with the description in each instance of the lands through the irrigation of which they were acquired by appropriation and beneficial use; also, in an appropriate column in each instance the names of the landowners making the conveyances, or their successors in interest, made formal parties defendant herein, are set down; all to the end that said rights may be identified and preserved; that plaintiff, in accord with said agreements and conveyances, is hereby authorized and empowered to divert from the Gila River the waters called for under said rights for use by irrigation upon the lands of the Florence-Casa Grande and San Carlos Projects as hereinafter further described; that the other rights of plaintiff, which may be generally described as those owned by the United States for and on account of the Indians of the Gila River and San Carlos Indian Reservations and as reservations and appropriations made by the United States for and on account of the Florence-Casa Grande and San Carlos Projects, are set down and outlined in their proper order in said Schedule as a matter of convenience, but each of said rights furthermore is specifically defined and decreed in later Articles hereof; including the right of the United States, as of the year 1924, to store the waters of the Gila River in the San Carlos Reservoir, which is specifically defined in Article VI and is of different character than the rights directly to divert from the natural flow of the stream, with which this Article of the Decree and the Priority Schedule made part hereof primarily has to do;

that certain of the rights of plaintiff, as same are set down and referred to in said Schedule, do not accumulate, as is specifically stated and described in the last paragraph of Article VI of this decree; that also certain of the rights of the Nevada Consolidated Copper Company, as same are set down in said Schedule, do not accumulate, as is specifically stated in the first paragraph of Article IX hereof; that as to all other rights to divert the waters of the Gila River which are set down and defined in said Schedule, including the so-called rights by purchase of the United States (which for convenience here comes within the designation "concern"), when rights of different priorities are ascribed to the same person or concern, said rights as thus accredited to that person or concern do accumulate, so that the total amount of water in acre feet per season which can be taken from the stream, under the priority of any certain date and the priorities of previous dates (ascribed to that person or concern in said Schedule), with the maximum rate of diversion in cubic feet per second governing same, may and shall be ascertained by adding together the number of acre feet per season set down under each of said priorities; that maximum rate at which same can be diverted being also the sum of the maximum rates, in cubic feet per second, given under each of said dates of priority; that rights to divert the waters of the Gila River are decreed to the various canal companies and are set down under their names in the Priority Schedule as of various dates of priority; that the description in each instance of the lands through the irrigation of which said rights were acquired by appropriation and beneficial use and the names of the landowners or their successors in interest, made formal parties defendant herein (and set down under the heading "PARTIES OWNING SAID LANDS WHEN JURISDICTION ACQUIRED HEREIN"),

whose beneficial application of water to said lands supported said appropriations are also listed under the names of each of said canal companies, the amounts of water in acre feet per season, with the maximum rates of diversion, allowed for the irrigation of the various subdivisions of said lands being given in the so-called individual columns under the general heading "Diversion Right" in said Priority Schedule; all to the end that the diversion rights of said canal companies may be adequately defined, and the individual rights of said defendant landowners to maintain, arrange or contract for, under applicable statutes and provisions of law, the diversion and carriage of water from the stream to said lands under and in accord with said rights may be identified and preserved; that the irrigation season referred to in this Article of the Decree, which shall as well apply to all rights adjudicated herein, is hereby defined as and determined to be the period beginning on January 1st of each year and ending on December 31st of the same year; that the Schedule above referred to and made part hereof is as follows:

[tables of priority rights and holders]

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VI

That plaintiff has and owns rights in the waters of the Gila River, and in and to the use of said waters, as follows:

(1) The right on behalf of the Pima and other Indians of the Gila River Indian Reservation, their descendants, successors and assigns, to divert 210,000 acre feet of the waters of the Gila River during each irrigation season, from the natural flow in said river at the Ashurst-Hayden

and Sacaton diversion dams – as of an immemorial date of priority and to the extent that such waters are available under said priority – at a rate of diversion not exceeding 437.5 cubic feet per second at any time during such season for the reclamation and irrigation of the irrigable Indian allotments on said reservation, which amount to 49,896 acres, as they now are or hereafter may be made, and of the administrative area on said Reservation which amounts to 650 acres, to the extent that the herein described water right, which is sufficient for and limited to the needs of 35,000 acres, will reclaim and irrigate the same. The waters available under this right and priority shall be divided and distributed to the lands of the Florence-Casa Grande Project as decreed and provided in subdivision (3) of this Article.

(2) The right, on behalf of the Apache and other Indians of the San Carlos Indian Reservation, their descendants, successors and assigns, to divert 6,000 acre feet of the waters of the Gila River, during each irrigation season, from the natural flow in said river at diversion points on said river within said reservation – or above the eastern boundary thereof under such rights of way as may now exist or be acquired therefor; due measures being taken to avoid injuries to other water users by said last mentioned diversions, – as of a date of priority of the year 1846 and to the extent that such waters are available under said priority – at a rate of diversion not exceeding 12.5 cubic feet per second at any time during such season, for the reclamation and irrigation of 1000 acres of the irrigable lands within the said reservation (or in part or wholly within the valley of the Gila River above the eastern boundary of said Reservation, if lands are there acquired by the United States for that purpose), situated

in the County of Graham, State of Arizona, and more particularly described as within said reservation and that portion of the valley of the Gila River above the San Carlos Reservoir and flow line thereof; that said water right, however, if or when sanctioned by law, at the discretion of the Secretary of the Interior and with the consent of the San Carlos Irrigation and Drainage District expressed by its board of directors, may be purchased by or for the benefit of the San Carlos Project and used for said project as other of that project's stream flow right below the San Carlos Reservoir are or may be used under this decree, provided, however, that such right is and shall be treated as a project right to which no individual or individual lands shall have or assert an interest or priority as against any lands given rights in the Priority Schedule; and defendants, Gila Valley Irrigation District, Virden Irrigation District and Franklin Irrigation District through their boards of directors, having offered and agreed to facilitate the aforesaid purchase of said water right so that it may be transferred and used as aforesaid for the benefit of the San Carlos Project as other of that Project's stream flow rights are or may be used below said reservoir under this decree and to pay the United States therefor the sum of Sixty-Two Thousand Five Hundred ($62,500.00) Dollars, said payments to be made by each of said Districts, in the proportion that the number of acres of land in said district decreed water rights herein bears to the whole number of acres of land in said three districts' so decreed water rights, and to pay said sum within two years from the acceptance of said offer, if said offer shall be accepted within five years from the date of this decree. Said offer, however, to be considered as made by said districts only when all requirements of Arizona law with regard to making binding offers of such a character shall have been

complied with, it is hereby decreed that if said offer is made and accepted at said purchase price sum or at any other sum agreed upon by the said three districts and the United States, the said water right shall be transferred as aforesaid for the benefit of the San Carlos Project, but, in no event shall be used or usable or be asserted as against the lands given rights in the Priority Schedule above the San Carlos reservoir on account of which have been paid the full proportionate per acre share of the cost of said purchase.

(3) The right to divert 372,000 acre feet of the waters of the Gila River, during each irrigation season, from the natural flow in said stream at the Ashurst-Hayden and Sacaton diversion dams, as of the date of priority of 1916, and to the extent that such waters are available under said priority – at a total rate of diversion not exceeding 775 cubic feet per second at any time during such season, for the reclamation and irrigation of the 62,000 acres of the irrigable lands of the so-called Florence-Casa Grande Project, or its equivalent, more particularly described as follows:

a. The aforesaid Indian allotments now or hereafter made on the said Indian Reservation, and the said administrative area, amounting in the aggregate to 50,546 acres to the extent that thirty-five sixty-seconds of the herein described water right, which is sufficient for and limited by the needs of 35,000 acres, will reclaim and irrigate the same.

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b. 27,000 acres of land in the private ownership of White persons (also referred

to herein as "White lands") described as follows: [tables of "White lands"]

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That in accord with the Agreement of Land Owners to Induce the Secretary of the Interior to Undertake the Florence-Casa Grande Irrigation Project, etc.' entered into between the owners of said privately owned lands and the United States, it is hereby further specifically ordered, adjudged and decreed that suitable devices for measuring the flow of water available and susceptible of being diverted by the aforesaid dam or dams to the canals of the said Florence-Casa Grande Project (now a part of the San Carlos Project system) shall be maintained and daily or more frequent measurements of said flow shall be made; that the first 300 cubic feet per second or less of water flowing in the river at the said dam or dams, available as a whole under the several rights and priorities of plaintiff, including its immemorial right described and set up in subdivision 1 of this article and the so-called rights by purchase, and susceptible of being diverted for the said project, shall be divided and distributed, less deductions for project canal losses as hereinafter provided, sixty and six-tenths per centum thereof to the Indian lands of said project and thirty-nine and four-tenths per centum to the White lands thereof; that of the next 300 second-feet of water or less thus flowing and available, less deductions on account of losses as aforesaid, fifty-one and seven-tenths per centum thereof shall be apportioned to the said Indian lands, and forty-eight and three-tenths per centum thereof to White lands; that all water available as aforesaid in excess of said 600 second-feet shall be divided, less deductions on account of losses as aforesaid, fifty-six and one-tenth per centum to said Indian lands and to said

privately owned lands, forty-three and nine tenths per centum, except that during periods of high water when it shall be possible and practicable to divert water for the use of the Indian lands within said project, or some of them, by means of the Sacaton Dam, the entire amount of water diverted for the said project by the said Ashurst-Hayden Dam shall be used for the irrigation of privately owned lands and of such of said Indian lands as cannot be adequately supplied from said Sacaton Dam; that furthermore the amounts of water thus apportioned to the White lands within said project shall be distributed to said lands in the following order:

(a) Certain of said lands to the extent of some 9,752.83 acres together with 790 acres in Sections 1 and 2, Twp. 5 S., Range 8 E., G. and S.R.B. and M., being identical with those tracts which are described in the Schedules of Rights and Priorities set out under Article V hereof and identified in said article as applying to the so-called rights by purchase of plaintiff, shall have a call upon the waters available under such apportionment in the order of their priorities as set out in said schedule.

(b) The remainder of said lands, amounting to some 17,247.17 acres, shall have the next three successive calls upon such waters as are available under such apportionment and in the following order:

[table of priorities]

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(c) That the Secretary of the Interior or his agents in dividing the waters of the said Florence-Casa Grande Project shall see that the

losses of water in the whole system of project canals (now a part of the San Carlos Project System) are shared as equitably as may be to the end that, with respect to such losses, no water right under the project shall enjoy any advantage of location, position or otherwise over any other project water right; but losses occurring in the Indian and private canals leading from said project canals shall be disregarded in the division of water hereinabove provided for; and furthermore whenever the quantity of water diverted into the canals of said project shall, in the aggregate, be so small that, after deducting the losses of transmission in the project canals and then dividing the residue between the Indian lands and the lands in private ownership as hereinabove provided for, the share allotted to the Indian rights would be too small to reach the Indian reservation, the Secretary of the Interior, or his agent in charge of said project, shall permit all of said water to be applied to the irrigation of privately owned lands in accordance with their priorities.

(4) The right to divert 603,276 acre feet of the water of the Gila River, during each irrigation season from the natural flow in said stream at the Ashurst-Hayden and Sacaton Dams above described – as of the date of priority of not later than June 7, 1924 (and for the purposes of this decree and for them only as of said date) and to the extent that such waters are available under said priority – at a total rate of diversion not exceeding 1256.5 cubic feet per second at any time during such season, for the reclamation and irrigation of the 100,546 acres of the irrigable lands of the San Carlos Project and for supplying water to the State of Arizona, and towns, villages and municipalities of that state, and federal agencies, as provided in the Act of March 7, 1928, and in the so-called Repayment Contract

bearing date the 8th of June, 1931 said 100,546 acres of project lands being more particularly described as follows:

> (a) 49,896 acres of land within the Gila River Indian Reservation which have been, or may be allotted to individuals among the Indians thereof (also referred to herein as "Indian Lands"), together with 650 acres within said reservation comprising the School Farm, Agricultural Experiment Station and Administrative Area.
>
> (b) 50,000 acres of land in private ownership of white persons (also referred to herein as "White Lands"), made up of such White Lands designated to come into the San Carlos Project by order of the Secretary of the Interior of April 25, 1928, and August 9, 1934, said designated lands being described as follows:

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(5) The right, as of the date of priority of not later than June 7, 1924, – and for the purpose of this decree and for them only as of said date – to store the waters of the Gila River in the San Carlos Reservoir of the aforesaid San Carlos Project by means of the Coolidge Dam (said Reservoir and Dam being situate within the San Carlos Indian Reservation) to the extent of the full 1,285,000 acre-feet capacity of said Reservoir at all times when said waters are available above said dam for such storage under the aforesaid priority; and the right in that relation to accomplish and control the release from said reservoir of the waters so stored and thus reduced to ownership, and to conduct the same down the channel of the Gila River to the Ashurst-Hayden and Sacaton diversion dams of the San Carlos Project and there to recapture and divert, and

control the diversion of, the same by means of said dams for conveyance in the canals leading therefrom to the above described 100,546 acres of the lands of said Project for the reclamation and irrigation thereof, and for the supplementation of amounts available therefor at said dams from the natural stream flow under plaintiffs rights as same are decreed herein, and for State and Federal purposes under act of March 7, 1928 as hereinbefore described.

(6) The right, as against and only against the parties to this cause, to divert from the Gila River 17,950 acre feet of water, – for the irrigation of 2992.5 acres of Indian lands at the Gila Crossing District on said Reservation – each irrigation season at a rate of diversion not exceeding 37.4 cubic feet per second of time, from the waters occurring or recurring in said river beginning at the point where the Southern Pacific Railway crosses said river in Section 13, Township 3 South, Range 4 East of Gila and Salt River Base and Meridian or between said point and a point one hundred feet above where the Salt River empties into the Gila River, at the diversion points on said reservation as now or hereafter located, as for the following dates of priority:

For 954 acres of said lands January 1, 1873.

For 587 acres of said lands January 1, 1876.

For 660 acres of said lands January 1, 1877.

For 139 acres of said lands January 1, 1900.

For 58.5 acres of said lands January 1, 1903.

It is further provided that water rights with the priorities fixed as aforesaid are for the irrigation of said Gila Crossing Indian lands, but subject at all times, to all

rights on said Gila River above said point hereinabove described, and provided also that said rights are subject to the right of the San Carlos project, to divert and use return flows, or water otherwise occurring in the river above said point and the right of said project to pump and otherwise interfere with and control the return flow from the lands within said project.

That certain of the foregoing rights, as listed under items (1), (3) and (4) above are inclusive one of the other so that diversions thereunder do not accumulate, and the amounts in acre feet per season and cubic feet per second stated in the 3rd item include those given in the 1st and those stated in the 4th item include those given in the 1st and 3rd; in each instance representing the total diversion allowable under that priority and those prior thereto as described in said items.

VII

That all Indian lands and all white lands now or hereinafter designated by the Secretary of the Interior as within the San Carlos Project and under said San Carlos Reservoir shall be entitled to share equally in all of the stored and pumped water of said Project in so far as that shall be physically feasible, and said lands shall share equally in all of the water of said Project of every nature as long as the stored and unstored water supply for said Project shall be sufficient for Project needs, and as far as that shall be physically feasible; but when, through lack of stored and pumped water, there shall be an insufficient supply of water for all of the lands of said Project lying under said reservoir, which condition or fact shall be determined by the Secretary of the Interior or his duly

authorized agent, the lands so situated, in addition to their proper share of such stored and pumped waters as may be available to the Project, shall be entitled to and have apportioned to them the unstored flow of the Gila River which is available as a whole, and susceptible of being diverted, for the Indian and White lands of the aforesaid Florence-Casa Grande Project together with the 790 acres in Sec. 1 and 2 T. 5 S., R. 8 E., G. and S.R.B. and M., hereinbefore mentioned, under and in pursuance of the various rights and priorities of the United States decreed herein for said lands, as follows, to-wit: said flow shall be divided between said Indian and White lands and distributed to such lands, whether the same shall be also included in the San Carlos Project or not, in accordance with the apportionment and division ordered and decreed in the third subdivision of Article VI hereof, and any surplus which may remain and be available in said river, under the priorities of plaintiff, for other lands (beyond those of the Florence-Casa Grande Project and said 790 acres) included in San Carlos Project under the priorities of plaintiff and provisions of this decree, shall first go to such of the Indian Lands in the San Carlos Project, and then in equitable proportion to such of the private and public lands thereof as are not also included in the Florence-Casa Grande Project and said 790 acres.

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VIII

That the diversions of water from the Gila River by the so-called upper valleys defendants (parties defendant to whom rights to divert water from the Gila River at points above the San Carlos Reservoir are decreed herein),

comprising the defendant canal companies named below, with the parties defendant named in the Priority Schedule and attached tables who are decreed rights through the canals of said companies and are served thereunder, and certain individual parties defendant who are accredited with rights to divert directly from the stream through private ditches, to-wit:

> Albert Canal Company, Billingsley Extension Canal Company, Black & McClerskey Canal Company, Brown Canal Company, Colmenero Canal Company, Colvin-Jones Canal Company, Cosper & Windham Canal Company, Cosper & Windham Extension Canal Company (Under contract whereby Cosper & Windham Canal Company makes actual diversion) Curtis Canal Company, Dodge-Nevada Canal Company, Duncan Canal Company, Fort Thomas Consolidated Canal Company, Fourness Canal Company, Graham Canal Company, Moddle Canal Company, Montezuma Canal Company, San Jose Canal Company, Sexton Canal Company, Shriver Ditch Company, Smithville Canal Company, Sunflower Canal Company, Sunset Canal Company, Tidwell Canal Company, Union Canal Company, Valley Canal Company, York Canal Company, York Cattle Company;
>
> R. H. Angle, J. H. Brown, T. D. Burton, W. C. Craufurd, J. W. Foote, R. C. Gilleland, J. H. Henderson, C. C. Hester, F. E. Ross, R. Sexton, Laura Short;

and/or their predecessors in interest, for the irrigation of the lands described in said Priority Schedule made part of Article V hereof; since their inception have been made under rights which were and are junior and subject to certain extensive rights of plaintiff to divert the waters of

said stream at points below the diversions of said defendants and also below the San Carlos Reservoir, which said rights of plaintiff are set down and referred to in said Priority Schedule, but are further identified and particularly described in Article VI and VII hereof, it being evidenced thereby that the earliest right of plaintiff is prior in time to all and every of the rights of said defendants, and certain of plaintiffs other rights are prior in time to certain of the rights of said defendants; that, however, plaintiff and said defendants, in recognition of the desirability of making it practicable for said defendants to carry on the irrigation of said upper valley lands to the extent to which the areas to which their said rights apply heretofore have been irrigated and so that the said San Carlos Act shall inure in part to their benefit and this suit may be compromised and settled, have agreed that the following provisions shall be and they are hereby embodied in this decree, which said provisions in turn, and in so far as they affect the other parties in this cause, shall inure to the benefit of and be binding upon them, to-wit:

(2) That on the first day of January of each Calendar year, or as soon thereafter as there is water stored in the San Carlos Reservoir, which is available for release through the gates of the Coolidge Dam for conveyance down the channel of the Gila River and for diversion and use on the lands of the San Carlos Project for the irrigation thereof, then the Water Commissioner, provided for herein, shall, to the extent and within the limitations hereinafter stated, apportion for the ensuing irrigation year to said defendants from the natural flow of the Gila River an amount of water equal to the above described available storage, and shall permit the diversion of said amount of water from said stream into the canals of said

defendants for the irrigation of said upper valleys lands in disregard of the aforesaid prior rights of plaintiff used on lands below said reservoir; the diversion of said amount of water by said defendants to be in accord with the priorities as between themselves stated in said Priority Schedule and for the irrigation of the lands covered by the rights accredited to said defendants in said Priority Schedule and the quantity of water permitted to be taken by said defendants in disregard of prior rights of the United States below is in addition to and not exclusive of the rights of said defendants to take from the stream in the regular order of their priorities as shown by the Priority Schedule, but of course within the duty of the water limitations of this decree; that if and when at any time or from time to time in any year, water shall flow into said reservoir after said date of first apportionment and shall be stored there and become added to the available stored water in said reservoir, the said commissioner shall make further and additional apportionments to said defendants of the natural flow of said stream as the same is available at the diversion points of said defendants, which said apportionments shall in turn correspond with and be equivalent in quantity to the amount of such accessions or newly available stored water supply; that in calculating apportionments of the stored water supply the Water Commissioner shall make appropriate deductions for losses for evaporation, seepage or otherwise that may be suffered between the time of the apportionment and that of the diversion of a corresponding quantity of water

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from the stream; that such apportionments, corresponding with net accessions during each annual period after first

apportionment, shall be made by said Water Commissioner at least as frequently as once per calendar month (provided accessions to stored supply have occurred during that period) and at such more frequent intervals as the conditions in his judgment may demand – his decisions in these regards to be subject to summary review by the Court as provided in Article XII hereof – and said Water Commissioner shall see to it that his said apportionments, when made, forthwith shall be placed of record herein and so posted or published as to inform all interested parties in that regard with reasonable promptness and despatch [sic]; it being herein explicitly provided that no apportionment or apportionments, made during any calendar year, shall carry over or be available in any manner for the succeeding year; that the diversions made by said defendants of the natural flow of the Gila River thus apportioned to them in disregard of the said prior rights of plaintiff shall be regulated by the Water Commissioner (under the authority and powers given him by this decree and/or by such further orders of the Court as may be made in that relation) in accord with the rights and priorities accredited to each of said defendants in said Priority Schedule, provided always that such diversions shall be limited to the amount of water then apportioned, as aforesaid, and in any event, during each irrigation season, do not and shall not exceed the total amount of water called for under the right accredited in said Priority Schedule to any given defendant, namely; 6 acre feet per acre for the irrigation season as defined in Article V hereof; and provided further that the drafts on the stream by the upper valleys defendants shall be limited to a seasonal year diversion which will result in an actual consumptive use from the stream of not to exceed 120,000 acre feet of water; said consumptive use made in any

seasonal year shall be determined by adding the recorded flows at a gauging station located in the Gila River at Red Rock Box Canyon above the heading of the Sunset Canal in New Mexico and a gauging station located in the San Francisco River immediately above its confluence with the Gila River and deducting from said sum the recorded flows at a gauging station located on the Southern Pacific Railway bridge crossing the Gila River near Calva, Arizona; and the Water Commissioner shall determine what diversions are permissible and reduce diversions in the inverse order of their priorities when and to the extent necessary to accomplish the aforesaid result. The aforesaid measurements shall include the whole flow of the stream, including floods, at the three points of measurement, and no allowance shall be made for accretions or additions to the flow between the point of measurement at Red Rock Box Canyon, and the confluence of the Gila and San Francisco Rivers, and in turn between the confluence of the Gila and San Francisco Rivers, and the aforesaid gauging station at the Southern Pacific Railway bridge. Said method of measurement is adopted as sufficiently accurate for practical purposes and as better suited for administering this decree than any more refined method of determining actual consumptive use.

(3) Upon agreement made by the owner of any right set forth in the Priority Schedule for land in the Safford Valley water may be diverted by the owner of land in the Duncan Valley within the duty of water in this decree set forth and within the apportionment of water for said Duncan Valley land in disregard of such Safford Valley right or rights, and that such waiver shall in no way deprive the Safford Valley lands thus waiving of their full apportionment of water herein provided for based on

water stored in the San Carlos Reservoir or their full right to take from the stream, in accordance with their priority and within the duty of water fixed by the decree as against water rights of the United States held on account of the San Carlos Project, but the right of the United States to insist upon its priorities as defined and modified herein as against Duncan Valley Lands shall not be abridged by this provision.

(4) That water released at the will of the plaintiff and for the purposes of the plaintiff from the San Carlos Reservoir at any time after the date of this decree other than for the proper irrigation of 80,000 acres of land or its equivalent in the San Carlos Project, shall be considered as stored in the San Carlos Reservoir at and after the date of such releases, and available as a basis for the above described apportionment of the natural flow to said defendants as it would be if such withdrawals had never been made.

(5) PROVIDED ALWAYS, that if by reason of lack of available storage in the San Carlos Reservoir no apportionment of the natural flow of said river is or can be made available to said defendants, then the diversions of said defendants, of or as soon as apportionments previously made to them have been consumed, shall no longer be made in disregard of the prior rights of plaintiff below said San Carlos Reservoir, but shall instead be made under and in accord with the rights and priorities set down in Article V, and the Priority Schedule made part hereof, and Article VI of this decree to-wit: in accord with their several priorities as same are set down in said Priority Schedule and subject to the prior rights of plaintiff as same are referred to therein and further described in Article VI of this decree.

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IX

(1) That the defendant Kennecott Copper Corporation shall be entitled, as of the dates of priority set down in the Priority Schedule made part of Article V hereof, for industrial, municipal, domestic and related beneficial purposes, to divert from the underground waters of the Gila River by means of its pumps, as same are or may be located within the lands described in said Priority Schedule under the heading "Point of Diversion," during the annual period beginning January 1st of each year, the amounts of water stated in said schedule, at the rate of diversion in cubic feet per second there given; subject, however, to the proviso that the total amount of water diverted and maximum rate of diversion, under the rights for such purposes accredited to said defendant in said Priority Schedule as of the priority dates of 1878, 1879, 1880, 1884, 1885, 1887, 1890, 1895, 1906, 1908, and 1909, shall not exceed the quantity of water in acre feet per annum or rate of diversion in cubic feet per second stated for the right of 1909, to wit: 16,221 acre feet and 22.22 cubic feet per second; that the rights for industrial, municipal, domestic and related purposes accredited to said defendant as of the dates of priority named below were first initiated, and thereafter perfected, by the diversion and application of the waters of the Gila River, through canals leading from the stream, to the irrigation of those certain acreages of the lands described below which are set down opposite said dates of priority, which said dates respectively represent the year in which said acreages were first irrigated, to-wit:

Date of Priority	Number of Acres	Area Containing Lands Thus Irrigated
1878	65.00	SE1/4 and SE1/4 SW1/4, Section 9;
1879	95.00	S1/2? SW1/4, Section 10;
1880	130.00	NW1/4 SW1/4, S1/2? SW1/4 and SW1/4 SE1/4, Section 14;
1884	165.00	SE1/4, NE1/4 and NW1/4 Section 15;
1885	60.00	NE1/4 Section 16; and
1887	60.00	N1/2 NW1/4 and N1/2 NE1/4 Section 23;
1890	10.00	
1895	40.00	
1906	15.00	
1908	153.00	All in Township 5 South, Range 15 East of the Gila and Salt River Base & Meridian

That the use for irrigation under said rights, when the pumps and plant of said defendant were put in operation in the year 1909, was changed and transposed into uses for industrial, municipal, domestic and related purposes, and the waters called for under said rights and priorities, or so much thereof as was available, since have been diverted from the stream or the underground waters thereof by means of the pumps of said defendant and continuously and beneficially applied to said purposes;

(2) That the requirements of said defendant each year for the above described purposes demand that it divert from the underground waters of the Gila River, in so far as same can be made available in that relation, at the continuous rate of ten thousand gallons per minute, or 22.22 cubic feet per second; same being equivalent by volume measurement to a maximum of 16,221 acre feet per annum; that prior to the construction of the San Carlos Reservoir and the storage of water therein the natural flow of the Gila River at and/or in the vicinity of the reduction plant and pumps of said defendant maintained an underground water plane, which when pumped from to meet the said requirements of defendant, had averaged an approximate minimum elevation, as gauged at said defendant's test well at that place, of 1920 feet above sea level (Nevada Consolidated Copper Company datum) and an approximate maximum elevation of 1930 feet above sea level (datum idem); that said diversions by said defendant then were, and since to the extent undertaken have been, made under rights which were and are junior and subject to certain extensive rights of plaintiff to divert the waters of the Gila River at points below the diversions of said defendant, and also below the San Carlos Reservoir, which said rights of plaintiff

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are set down and referred to in Article V hereof and the Priority Schedule included therein, and further defined in Article VI and VII hereof, it being evidenced hereby that the early right of plaintiff is prior in time to all and every of the rights of said defendant and certain of plaintiff's other rights are prior in time to certain of said defendant's rights and thereby are credited with dates of priority earlier than those of said defendant; that, however, plaintiff and

defendant by way of consent hereto, in recognition of the desirability of making it practicable for said defendant to continue and further carry on its operations to the extent of its aforesaid requirements and so that this suit may be compromised and settled, have agreed that the following provisions shall be embodied in this decree, which said provisions in turn, and in so far as they affect the other parties in this cause, shall inure to the benefit of and be binding upon them, to-wit:

(3) That said defendant shall be entitled to divert, by means of its said pumps as they now exist or may be replaced, so much of the underground waters of the Gila River as may be available at its said pumps and as will meet its said requirements – but not to exceed the amount of 16,221 acre feet during each annual period reckoning from January 1st of each year as aforesaid, and limited to a maximum rate of diversion of 10,000 gallons per minute, viz. 22.22 cubic feet per second – in disregard of the said prior diversions rights of plaintiff below said San Carlos Reservoir as same are set out and defined in this decree as aforesaid; that if during those periods when no appreciable releases of water from the San Carlos Reservoir are being made into the channel below the Coolidge Dam, the said diversions of defendant by means of said pumps (limited to the amounts required for beneficial application to the above described industrial, municipal, domestic and related purposes and in any event to the said 16,221 acre feet per year and 22.22 cubic feet per second) shall cause the pumping water plane to fall below 1920 feet above sea level, as gauged at said test well of defendant (Nevada Consolidated Copper Company datum), or some other mutually agreed upon point and datum, then, if there is any natural flow in the Gila River at the point where said

stream enters the San Carlos Reservoir, so much thereof (or so much as is available if the amount is insufficient) as will bring the level of said pumping water plane, as gauged at said test well of defendant, or other point aforesaid, to the average of the approximate maximum and minimum elevations aforesaid to wit: 1925 feet above sea level (datum idem), will be allowed to flow through said reservoir into the channel below – if the storage level in said reservoir is high enough physically to permit its release through the Coolidge Dam – said operations to be of simultaneous character in that releases through said Coolidge Dam, equivalent to the natural flow entering the reservoir or such portion thereof as may be sufficient for the above described purpose, shall be made forthwith when it is determined (mutually by the plaintiff and defendant, or in case of disagreement by the Water Master, whose decision may be reviewed as provided in Article XII hereof) that the pumping water plane, under the conditions above described, has fallen below the 1920 foot level aforesaid; that such releases of natural flow through the Coolidge Dam shall be accomplished so as to make the most practical and workmanlike use of the amount available for the purposes thereof; taking into consideration the vital necessity of avoiding in so far as possible the waste of water into the stream below the gravels in which the pumping water plane is being maintained;

(4) That the diversions of water from the Gila River by said defendant and its predecessors in interest for the irrigation of the lands described in the Priority Schedule for which said defendant is accredited rights for irrigation as of the dates of priority of 1908, 1916, and 1926, since their inception have been made under rights which were and are junior and subject to those certain and extensive

rights of plaintiff to divert the waters of said stream at points below the said diversions of defendant; which said rights of plaintiff are set down and referred to in Article V hereof and the Priority Schedule included therein and are further defined in Article VI and VII hereof; it being evidenced thereby that the early right of plaintiff is prior in time to all and every of the rights of said defendant and certain of plaintiff's other rights are prior in time to certain of said defendant's rights, and thereby are accredited with priorities which are earlier than the aforesaid rights of defendant; that, however, plaintiff and defendant, by way of consent hereto and in recognition of the desirability of making it practicable, in so far as possible, for said defendant to carry on the irrigation of its said lands to the extent of the acreages to which its said rights of 1908, 1916 and 1926 apply, and so that this suit may be compromised and settled, have agreed that the following provisions shall be embodied in this decree, which said provisions in turn, and in so far as they affect the other parties in this cause, shall inure to the benefit of and be binding upon them, to-wit:

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(5) That when, under the rule and method of apportionment stated in Article VIII of this decree, there is apportioned to the so-called upper valleys water users amounts of water from the natural flow of the Gila River corresponding with the available storage in the San Carlos Reservoir, then there also shall be apportioned to the defendant Kennecott Copper Corporation, from the natural flow of said river as hereinafter defined, for the irrigation of its said lands, an amount of water per acre thereof corresponding with the amount per acre apportioned to said upper valleys as aforesaid; and thereupon, said

defendant shall be entitled to divert – in disregard of the said prior diversion rights of plaintiff below as same are set out and defined in this decree as aforesaid – at the points of diversions and by means of the ditches ascribed to it in the Priority Schedule, so much of the natural flow of the Gila River, limited always to the amount of water then apportioned to it as aforesaid, as can be beneficially applied to the irrigation of the lands to which said rights apply; said diversions as of course to be limited in any event to the amounts of water in acre feet per irrigation season and rates of diversion in cubic feet per second stated for said rights in the Priority Schedule; that in as much as the waters flowing in the Gila River at defendant's said points of diversion, during a great portion of the irrigation season, will be made up in large measure of stored water which has been released from the San Carlos Reservoir and is being piloted down the stream channel to the diversion dams and distributing canals of the San Carlos Project, the natural flow available as aforesaid to said defendant, under the limitations of said apportionment, shall be gauged by and deemed to correspond with the natural flow of the Gila River and San Carlos River at the points where said streams enter the San Carlos Reservoir, plus such contributions thereto between the Coolidge Dam and said diversion points of defendant as may occur, but subject to such drafts upon such total as may be made by owners of rights of diversion under this decree prior to said rights of defendant (if any there are) between said Coolidge Dam and said diversion points of defendant.

(6) PROVIDED ALWAYS, that the foregoing provisions of this Article IX are hereby explicitly made subject to the proviso that whenever under Article VIII hereof, by

reason of lack of available storage in the San Carlos Reservoir and the consumption of previous apportionments thereunder, no apportionment of the natural flow of said river is or can be made available to the so-called upper valleys defendants in disregard of the prior rights of plaintiff below said reservoir, and therefore diversions by said defendants and plaintiff are required to be made under and in accord with the rights and priorities set down in Article V (and the Priority Schedule therein) and VI of the decree, then the diversions of defendant, as against all the other parties in this cause, whether for industrial, municipal, domestic and related purposes as described in subdivisions (1) to (3) above – or for irrigation as described in subdivisions (4) and (5) if or when its apportionment in that relation also has been consumed – shall be subject to and be made in accord with its priorities as same are stated in the Priority Schedule and not otherwise, saving and excepting only that its diversions for said industrial, municipal, domestic and related purposes as against plaintiffs prior rights of diversion below shall still be regulated and controlled as provided in subdivisions (2) and (3) of this Article; subject to the further proviso, however, that the natural flow of the Gila River as measured where it enters the San Carlos Reservoir, or drafts upon it in conformity with priorities against later rights above, will not be available in any event below said reservoir unless the storage level therein is sufficiently high to permit its release through the Coolidge Dam. It is further provided that the pumped diversions of said defendant when being made under subdivisions (2) and (3) of this Article, at times of greater peak loads, may exceed by 10% the rate of 22.22 cubic feet per second stated above, if water therefor is available at said pumps, but that the total diversions for any year (January 1st to

December 31st inclusive) in such event shall still be limited to 16,221 acre feet.

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X

(1) That the diversions of water from the Gila River by defendants Joseph J. Anderson, Grady L. Herring and T. H. B. Glasspie, and their predecessors in interest for the irrigation of the lands described in the Priority Schedule made part of Article V hereof, for which said defendants are accredited rights for irrigation as of the dates of priority named in said schedule, since their inception have been made under rights which were and are junior and subject to those certain and extensive rights of plaintiff to divert the waters of said stream at points below the said diversions of defendants; which said rights of plaintiff are set down and referred to in Article V hereof and the Priority Schedule included therein and are further identified in Articles VI and VII hereof, and thereby are accredited with priorities which are earlier than the aforesaid rights of defendants; that, however, plaintiff and said defendants, by way of consent hereto and in recognition of the desirability of making it practicable in so far as possible for said defendants to carry on the irrigation of their said lands to the extent of the acreages to which their said rights apply and so that this suit may be compromised and settled, have agreed that the following provisions shall be embodied in this decree, which said provisions in turn, and in so far as they affect the other parties in this cause, shall inure to the benefit of and be binding upon them, to wit:

(2) That when, under the rule and method of apportionment stated in Article VIII of this decree, there is

apportioned to the so-called upper valleys water users amounts of water from the natural flow of the Gila River corresponding with the available storage in the San Carlos Reservoir, then there also shall be apportioned to said defendants, from the natural flow of said river as hereinafter defined, for the irrigation of their said lands, an amount of water per acre thereof corresponding with the amount per acre apportioned to said upper valleys as aforesaid; and thereupon; said defendants shall be entitled to divert – in disregard of the said prior diversion rights of plaintiff below as same are set out and defined in this decree as aforesaid – at the points of diversion and by means of the ditches ascribed to them in the Priority Schedule, so much of the natural flow of the Gila River, limited always to the amount of water then apportioned to them as aforesaid, as can be beneficially applied to the irrigation of the lands to which their said rights apply; said diversions as of course to be limited in any event to the amounts of water in acre feet per irrigation season and rates of diversion in cubic feet per second stated for said rights in the Priority Schedule; that in as much as the waters flowing in the Gila River at defendants' said points of diversion, during a great portion of the irrigation season, will be made up in large measure of stored water which has been released from the San Carlos Reservoir and is being piloted down the stream channel to the diversion dams and distributing canals of the San Carlos Project, the natural flow available as aforesaid to said defendants, under the limitations of said apportionment, shall be gauged by and deemed to correspond with the natural flow of the Gila River at the point where said stream enters the San Carlos Reservoir, plus such contributions thereto between the Coolidge Dam and said diversion points of defendants as may occur, but subject to

such drafts upon such total as may be made by owners of rights of diversion under this decree prior to said rights of defendants (if any there are) between said Coolidge Dam and said diversion points of defendants.

(3) PROVIDED ALWAYS, that the foregoing provisions of this Article X are hereby explicitly made subject to the proviso that whenever under Article VIII hereof, by reason of lack of available storage in the San Carlos Reservoir and the consumption of previous apportionments thereunder, no apportionment of the natural flow of said river is or can be made available to the so-called upper valleys defendants in disregard of the prior rights of plaintiff below said reservoir, and therefore diversions by said defendants and plaintiff are required to be made under and in accord with the rights and priorities set down in Article V (and the Priority Schedule therein) and VI of the Decree, then the diversions of the defendants above named, as against all the other parties in this cause – if or when their apportionment in that relation also has been consumed – shall be subject to and be made in accord with their priorities as same are stated in said Priority Schedule and not otherwise; subject to the further proviso, however, that the natural flow of the Gila River, as measured where it enters the San Carlos Reservoir, will not be available below said reservoir on occasions when the storage level therein is not sufficiently high to permit its release through the Coolidge Dam.

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XI

That the lands within the Gila River watershed for the irrigation of which rights are decreed herein are arid

or semi-arid in character and require irrigation in order that crops of value may be produced thereon; that except as herein specifically provided no diversion of water from the natural flow of the stream into any ditch or canal for direct conveyance to the lands shall be permitted as against any of the parties herein except in such amount as shall be actually and reasonably necessary for the beneficial use for which the right of diversion is determined and established by this Decree, to-wit: shall be made only at such times as the water is needed upon their lands and only in such amounts as may be required under the provisions hereof for the number of acres then being irrigated; that in cases where by this Decree water is allowed to be diverted by and through any ditch by the owner thereof for another party, the terms of the contractual relations existing between them are not intended to be determined herein; that whenever the total area under a particular canal is decreed more than one water right, each having the same or different priorities or in its different parts having different rights and priorities, the total area may have used upon it all of its several rights in the order of their priorities, subject only to the requirement that no greater net draft on the stream be made than if each right in the order of its priority were used only on the particular lands for which it was originally acquired or reserved; that rotation, which is a well known, recognized and effective practice in irrigation administration (constituting in effect the combining of flows allowed to be diverted from a given stream under two or more rights so as to provide for the alternate use of more adequate irrigation heads as between neighboring or other ditches taking from such stream), shall be permitted at all times and shall be required whenever necessary in order to obtain reasonable economies in the use of water or in order

to give to each ditch or water user a more advantageous method of irrigation, providing that such rotation shall not injuriously affect any of the rights determined or allowed by this decree; that the Water Commissioner provided for herein shall arrange for and enforce such rotation, but shall consult with, and endeavor to obtain the agreements of, such water users as in his judgment should resort thereto, and shall embody his action in this regard into such reports as he may make or be required to make to the Court herein; that if no valid objection thereto be made by other water users, an owner of any right decreed herein, when the allowable diversion thereunder in the judgment of the Water Commissioner does not constitute an adequate irrigation head for his lands, may with or without agreement for rotation, when permitted by said Water Commissioner, divert a larger head or flow into his ditch for short periods of time in lieu of the smaller flow allowed to him under his said right providing always that such use shall not exceed for the irrigation season the amount in acre-feet herein specified and allowed to be diverted from the stream for his lands; that appropriations and priorities of the same date rank as having rights of the same standing, and as having a simultaneous call upon the stream source in the proportion which said rights, as decreed herein, bear to each other in amounts entitled to be diverted thereunder; that any of the parties to whom rights to water have been decreed herein shall be entitled, in accord with applicable laws and legal principles, to change the point of diversion and the places, means, manner or purpose of the use of the waters to which they are so entitled or of any part thereof, so far as they may do so without injury to the rights of other parties as the same are defined herein.

XII

That a Water Commissioner shall be appointed by this Court to carry out and enforce the provisions of this decree, and the instructions and orders of the Court, and if any proper orders, rules or directions of such Water Commissioner, made in accordance with and for the enforcement of this decree, are disobeyed or disregarded he is hereby empowered and authorized to cut off the water from the ditch then being used by the person so disobeying or disregarding such proper orders, rules or directions; promptly reporting to the Court his said action in such case and the circumstances connected therewith and leading thereto; that whenever the necessities of the situation appear to the Court so to require, the Court shall authorize the employment by the Water Commissioner of such person or persons to assist that officer as to the Court may seem necessary to carry out properly the provisions of this decree and the orders of the Court; that the term of employment, expenses and compensation of said Water Commissioner and his assistants, the payment thereof and the means and methods for securing funds with which to pay the same, shall be fixed by orders which the Court may hereafter from time to time make; that any person, feeling aggrieved by any action or order of the Water Commissioner, in writing and under oath, may complain to the Court, after service of a copy of such complaint on the Water Commissioner, and the Court shall promptly review such action or order and make such order as may be proper in the premises; that the owner or owners of each ditch or canal herein authorized to divert water from the natural flow of the Gila River for direct conveyance to and irrigation of lands, unless specifically excused by the Court or Water Commissioner, shall at his own expense install

and at all times maintain at any appropriate place at or near the head of said ditch,

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a reliable and readily operated regulating headgate and a measuring box, flume or other device which may be looked and set in position – the same to be approved by the Water Commissioner – so that the water diverted into said ditch or canal at any and all times may be regulated and measured; that upon failure of any owner or owners to install structures of the above described character on or before one year from the date of this decree or on or before such different day as the Court or Water Commissioner shall set or determine – after due notice from the Water Commissioner so to do – the said Water Commissioner is herein authorized to cut off diversions of water into said ditch or canal until such devices and structures shall be installed and maintained.

XIII

That each and all of the parties to whom rights to water are decreed in this cause (and the persons, estates, interests and ownerships represented by such thereof as are sued in a representative capacity herein), their assigns and successors in interest, servants, agents, attorneys and all persons claiming by, through or under them and their successors, are hereby forever enjoined and restrained from asserting or claiming – as against any of the parties herein, their assigns or successors, or their rights as decreed herein – any right, title or interest in or to the waters of the Gila River, or any thereof, except the rights specified, determined and allowed by this decree, and each and all thereof are hereby perpetually restrained and

enjoined from diverting, taking or interfering in any way with the waters of the Gila River or any part thereof, so as in any manner to prevent or interfere with the diversion, use or enjoyment of said waters of the Gila River or any part thereof, so as in any manner to prevent or interfere with the diversion, use or enjoyment of said waters by the owners of prior or superior rights therein as defined and established by this Decree; that nothing herein shall prejudice the rights of any of the parties hereto or of their grantees, assigns or successors in interest, under any transfer or legal succession in interest after the commencement of this action, to any of the rights hereby adjudicated; that except as hereinbefore mentioned or otherwise stated, the provisions of this Decree shall bind, and inure to the benefit of, the grantees, assigns and successors in interest of the owners of rights and parties hereto, whether substituted as parties or appearing in this case or named herein or not; that the several parties to this suit shall pay their own costs in this action as directly incurred or authorized by them respectively, provided that any compensation of the Water Commissioner, or amounts shown to be coming to him or the reporter, if any there be, shall be paid in such manner, at such times and by such parties as may be ordered by the Court; that the Court retains jurisdiction hereof for the limited purposes above described, this decree otherwise being deemed a final determination of the issues in this cause and of the rights herein defined.

ALBERT M. SAMES,

Judge

Done in Open Court this twenty ninth day of June, 1935.

Page 1

STIPULATION FOR AND CONSENT TO THE ENTRY OF A FINAL DECREE IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA IN THE CASE OF UNITED STATES OF AMERICA, V. GILA VALLEY IRRIGATION DISTRICT, ET AL.

Come now the parties hereto, either in person or by their solicitors, and inform the Court that they have reached a settlement of the issues in this cause and have adjusted and settled their respective claims as between each other; that they have set up in the within and foregoing decree the respective rights of all parties hereto, and request the Court to adopt said decree as its finding herein and that it be entered as its final decree in this cause, settling and adjudicating the rights of the parties hereto.

For the United States of America

HOMER CUMMINGS,

The Attorney General

HAROLD L. ICKES,

The Secretary of the Interior

CLIFTON MATHEWS, F. E. FLYNN,

Clifton Mathews, Esq. June 24, 1935

United States Attorney, Solicitors for the plaintiff April 11, 1935

GERTRUDE M. CONVERSE,

Gertrude M. Converse, Solicitor for the San Carlos Irrigation and Drainage District, defendant heretofore ranged in

interest, on the side of the plaintiff, and for the following other defendants:

Archie L. Bartlett; Fred W. Bassler; Maude M. Bassler; George W. Burgess; Louis Cathemer; Hazel A. Converse; Eldora Curry; Roland Curry; Salvadore S. Feliz; Juan S. Feliz; Manuel S. Feliz; Pedro S. Feliz; J. J. Fraser; F. P. Jamieson; J. C. Jamieson; W. O. Kidder; Edith Knappenberger; Frank Knappenberger; Ed Lacy; Elizabeth M. Martin; Rolland H. Moorehouse; L. S. Nafziger; M. N. Nafziger; Leon M. Nowell; George W. Smith; C. H. Southworth; Dugald Stewart; James R. Treat; Louise M. Trekell; and Don A. Trekell.

APPENDIX 2

In the District Court
of the United States
in and for
The District of Nevada

– IN EQUITY, DOCKET NO. A3 –

The United States of America
Plaintiff

-vs.-

Orr Water Ditch Company, et al.
Defendants

FINAL DECREE

In the District Court of the United States
in and for the District of Nevada
In Equity, Docket No. A3
The United States of America, Plaintiff

vs.

(A) Daisy Adams, successor to George Imes and Andrew Drake (435); Henry Brewster Adams and Edna R. Adams (380), Aguerrebere and Marinelarina, successors to Coopers (66) E.R. Albee and Leora Albee, successors to William Pierson (638); A.E. Albers (163), Mrs. P.J. Allen (562), W.O. Allen or successors, successors to J.W. Coulter (456); A.A. Almgren (572), H.F. Alps (367), James Alt and Susan Alt Estate, succeeded by Charles W. Mapes (601) C.J. Anderson, successor to Mary De Remer (445); Henry Anderson (335-336), Anderson and Lee, executors, P.S. Jensen Estate (375); Venanzio D. Andrea and Attilo Deini, successors to J.B. McCullough (345); Louis Anelli, intervenor (135); John Aratzabel, successor to F.M. Rowland (398); Eugenio Arbico, successor to Maude Menardi (501); Mrs. Louise Arden (63), James Atcheson and L.R. McKenzie, successors to A.L. Laughton, intervenor, and to George Christensen (4[illegible]); G.B. Avansino (184, 214), G.B. Avansino (270, 368); John Avansino, succeeded by L.M. Christensen (587,608); Lazzaro Avansino (143), Louis Avansino, succeeded by Pasquale Capurro (466) and Peter Finn and co-owners (468); Luigi Avansino, succeeded by R.T. Jenkins (238); P.G. Avansino, successor to S. Martinengo (413); F.V. Avilla, intervenor, successor to J.L. Wollam (119); Antonio Azaveda, succeeded by George Grose (327-328);

(B) Ella M. Bailey, formerly Ella M. Smith, and Viola M. Sauer – (655-656-657-658-659-675); H.H. Bailey, successor to Mrs. Kate Brackin (418); Isaac N. Bakeless (209-210), Henry B. Baker (86), Angelo Balsi (211-212), Bank of Nevada Saving and Trust Company, incorporated, H.A. Banta, successor to L.M. Christensen (513); Ben Barbash and Louis Cohn, successors to J.J. Lyons (593); G.C. Barber (156½); Alessandro Baroli (178½-205) successor to Mary De Remer (256); Mrs. G.A. Bartlett (451), J.J. Barton, succeeded by Joe Ryans and E. Hawkins (154); Vic Basso, intervenor (134); Mrs. Anna Bates (412-505); Julien Bazin (279), Mrs. C. Berg (36), D. Bergerin (34), Mary G. Bellamy, succeeded by A.H. Ramelli (294); Brune Bernard, succeeded by A. Bonamici, G. Sorani and S. Sorani (581); Jean or John Bernard (420), Louis W. Berrum (145-177-178-204-260), succeeded by Carl Elges (173); Walter Berry, succeeded by Ginlio Quilici, Ernesto Giannattei and Narciso Matteoni (470-471); H. Bersani, intervenor (83) and successor to Garavanti and Pessi (84); Angela Besso, Carrie Besso, Emery Besso and Frank Besso, intervenors, successors to Augustino Besso (111-112-194); Joseph Bianchini (570), E.L. Bickford, succeeded by Mrs. Ed. Harvey (540); George R. Bidleman, succeeded by Pete Laiolo, William Capurro and Louis Capurro (472-473); Nick Bisagno (315), J.T. Bisagno, Ferdinand Bisagno and T.J. Bisagno, successors to William H. Frazer (319); F.D. Black, successor to J.P. Kane (437); J.M. Blood (285); George Blundell (354-355), T.H. Blundell, succeeded by J.P. Reynolds (630); T.H. Blundell, successor to E.J. Posvar (637); Mrs. O.J. Boies, succeeded by E.C. Kylander (539); Andy Bonamici and G. Sorani and S. Sorani, successors to O.C. Ross (581); Antone Borsi and Steve Borsi, successors to E.A. Brainard, F. Roberti and C.T. Mullins (53); Mrs. C.E. Boswell, successor to J. Duncan (564),

Giovanni Bottini (520), Mrs. Bessie Bovee, succeeded by J.H. Schroeder (492); Myrtle B. Boynton, Alice Boynton, John W. Boynton, Jr., Clinthy C. Boynton, or successors, (476 to 479); Mrs. Kate Brackin, succeeded by H.H. Bailey (418); Jeanette Bradley (266-479), Celia Bradshaw (275), E.A. Brainard, succeeded by Steve Borsi and Antone Borsi (53); E.A. Brainard, succeeded by M.C. Galvin and J. Galvin (323); R.N. Brannin, succeeded by C.L. Steiner (557); T.M. Branton (699); Mary Brewington, formerly Mary De Remer (439); Trannie Bridgeman (223), Louis Britshgi (351-352-353); Charles W. Brooks and Alfred Peckham, successors to Christopher J. Finn and Peter Finn (474-475); Adna Brown, Albert Brown, Mrs. Elizabeth Brown and Laura Brown (715); Jessie Bryan, John S. Bryan, successors to H.F. Alps (366); J. Burke and P. Burke, succeeded by Felix Turrillas and Amado Yriarte (288); A.A. Burke and F.D. Burke (493), Jeanette Burke and James Burke, succeeded by Holcomb Brothers (706).

(C) John Cadlini and Joe Cadlini (631), Cafferata and Pearson (244½), Mrs. Ed. Calhoun, successor to Irene Poole and James Poole (551); Mrs. Annie Callahan, Mary Ann Callahan (650-651); James Callahan (648'9) and as successor to Degiovanni Brothers, intervenors, (78-188); Phillip Callahan (647-'7½); George H. Calligan, successor to William Neasham (568); Mrs. William Calligan, succeeded by A. Van Derhoof (536); Ernesto Canepa intervenor, successor to A. Chinsini and R.W. Parry (51-101); A. Capurro, successor to Warren G. Rice (594); Angelo Capurro, succeeded by L.A.L. Green (661-673-674); Bartolome Capurro, successor to G.B. Questa (405-406); B. Capurro and John Capurro or Gustino Capurro (52-108-146-192-52½-727-727½); Joe Capurro, successor to Steve Cappurro, intervenor (136); Louis Capurro and William

Capurro, successors to George R. Bidlemen (472); Pasquale Capurro (459); Pasquale Capurro, successor to Louis Avansino (466); S. Capurro, (171-172); Stefano Capurro and David Gardella, successors to D. Zolezzi (736); Stephano Capurro, succeeded by L.F. Johnson (50-97); Steve Cappurro, intervenor, succeeded by Joe Capuro (136); William Capurro, successor to George R. Bidleman (472); Samuel Caramella (465), G. Cardona (504), Joe Carmella, successor to Nevada United Mines Company, a corporation (324); Matie D. Carter, succeeded by D.C. Wheeler, Inc., (182-207); Mary Casazza, Joseph Casazza, and Toni Casazza, successors to Paulo Casazza, Joe Casazza, David Casazza and Toni Casazza (76-187-718); G. Casci (582-619); Pietro Casinelli (391-392-393-403); P. Casinelli, successor to John Gotalli (583); Casquet (37); Charles E. Catoir and Joe P. Strathman, successors to S.J. Prose (397); Mrs. Crissie A. Caughlin (150-150½-230-726½), Central Pacific Railway Company, succeeded by Southern Pacific Company, (526-527); D. Ceresola (642), Estate of Louis M. Ceresola, J.A. Ceresola, W.J. Ceresola, successors to E. Olinghouse (639-640-643-645); G. Ceresola, successor to George Gould, (534); A. Cerfoglio, successor to C.F. Cooper (183-213); D. Cerfoglio and P. Cerfogio, successors to Mrs. B. Ghiggeri or Madeline Ghiggeri (70); L. Cerveri and G. Cerveri, intervenors (89); A.E. Cesmatt (161), Moses Chase (284), A. Chinsini, succeeded by Ernesto Canepa (51-101); Mrs. Alice Chism (271-369-370), C.J. Christensen, successor to Stewart McKay (610); George Christensen, succeeded by Atcheson and McKenzie, successors to A.L. Laughton, intervenor (48); George Christensen (166); J.H. Christensen or successor to Mary J. Howard (717); L.M. Christensen, successor to John Avansino (587-608); L.M. Christensen (494-495), L.M. Christensen, succeeded by H.A. Banta

(513) and by A.L. Jensen (512); Nels Block Christensen (330-569), J.E. Church; Dale B. Clanton (423), A.J. Clark, succeeded by Nora Clark (269-364); A.J. Clark, succeeded by Humphrey Supply Company (533); Estate of Samuel Clark (290), Theodore W. Clark (578), Grace Clow (124), G.N. Clute, succeeded by P.S. Jensen (349); Louis Cohn, successor to J.J. Lyons (593); Mrs. F.T. Cole, succeeded by Otto Holz (559); L.A. Cole, successor to G.R. Duncan (422); Comer, succeeded by F.C. Smith (565); Commercial Soap Company (243½); Frank Compston and Charlotte Compston, successors to Tony S. Faretto and wife, Catherine Faretto (179½-206-259); Estate of B.A. Cooper, Sophia Cooper, Charles F. Cooper, Myrtle A. Cooper, Urban A. Cooper and Hazel B. Cooper, succeeded by Aguerrebere and Marinelarina (66); Charles F. Cooper, succeeded by A. Cerfoglio (183-213), C.M. Copelin, successor to Mrs. P.E. Fulwider and J.F. Williams (545); W.H. Corbiere, succeeded by H .S. Teasdale (556); J.W. Coulter, succeeded by W.O. Allen (456); L.E. Cox and wife, Nancy J. Cox and C.L. Cox (515); Mrs. M.N. Cox (176), R.J. Crawford (276), George T. Crosby (503), Alex Crotta, successor to Lucy M. Ulyatt (576); C.E. Crouch, succeeded by Mrs. Otto Holz (560); Mrs. Mamie Crowell, succeeded by Charles Faretto and A. Landa (67); B. Curano, successor to Mary De Remer (254); James Curnow, succeeded by Natale Denivi (528) and Mary Sorani and Plenio Sorani (529); Laura B. Curnow, successor to Mrs. William Curnow (531).

(D) Alice Davis, succeeded by W.H. Davis (561); W.H. Davis (566), Rick De Bernardi (55-151-196), Rick De Bernardi, successor to Lena Robertina (56); Decosse (25), Degiovanni Brothers, intervenors, succeeded by J. Geravanta (82); Degiovanni Brothers, intervenors, succeeded by James Callahan (78-188); Degman and Richardson,

succeeded by Carl Elges (64); Attilo Deini and Venanzio D. Andrea, successors to J.B. McCullough (345); Natale Denivi, successor to James Curnow and Antone Figone (528); G.S. Denton, succeeded by Peter Quillici (17); Domenico Depaoli (586); M.P. Depaoli, successor to John B. Sturla and Frank Monte (641); M.P. Depaoli, successor to E. Olinghouse (639-640-643-645); Mary De Remer, now Mary Brewington; Mary De Remer, succeeded by B. Curano (254), Mrs. L.V. Herman (255), A. Baroli (256), Angelina Gaspari (350), J.A. Scanavino (440), J.W. Jones (441), H.E. Snare (442), D.P. Jones (443), E.L. Hall (444), and C.J. Anderson (445); L. Devincenzi (413½); Mrs. Mary Dickey and Mary V. Dickey, succeeded by Charles W. Mapes (601); C.D. Dixon, succeeded by M. Pradere (340); Johnson Dixson (22); Andrew Drake, succeeded by Daisy Adams (435); Mrs. F.A. Drake, successor to R.N. Drake (308-408½); Mrs. E.A. Drolette, successor to S.M. Tallman (169); C.H. Duborg (277); J. Duncan, succeeded by Mrs. C.E. Boswell (564); G.R. Duncan, succeeded by L.A. Cole (422); F.E. Durham (94); J.H. Dwyer (424).

(E) Marion L. Eaton (237); W.T. Echols, succeeded by C.P. Ferrel (305-407½); J.W. Eckley, administrator, succeeded by Carl J. Lockwood (623); Eddystone Farm and Produce Company, succeeded by Mark L. Yori (302-303); Stephen Ede and Philip Ede, succeeded by Peter Thomsen (215-216-217); Albert W. Edwards; Electric Mining and Reduction Company, incorporated (12); Carl Elges (316); Carl Elges, successor to Degman and Richardson (64) and L.W. Berrum (173); Miss Estey (27); Alvira Evans (133); Elizabeth Evans, succeeded by C. Gadda and W.F. Gadda (283); Elizabeth Evans, succeeded by J.N. Evans Estate Company, incorporated, (130-280-383-616-618).

(F) C.J. Fairchild (620); Antonio Faretto and Louis S. Faretto (506-507); Charles A. Faretto, Katherine Faretto, M.D. Faretto, successors to Joe Faretto Estate, succeeded by Charles Faretto and A. Landa (67); Federal Trust Company, succeeded by Julius Pieh (253); Domengo Felipelli (79-189-720½); G. Felipelli, succeeded by Gerolemo Zolezzi, intervenor (86); Nick Felipelli (224-225); D. Ferrari and Caterina Ferrari (598), succeeded by Pasquale Istrice (599); Angelo Faretto, John Faretto and Joseph Faretto (75-219-220); Estate of D. Ferretto (662-676-677-678-679); John G. Ferretto and Peter W. Ferretto (663-684-685-686); T.S. Ferretto, succeeded by Frank Compston and Charlotte Compston (179½-206-259); C.P. Ferrel, successor to Carlo Rosasco and W.T. Echols (305-407½); G.L. Ferris and Mrs. L. Ferris, successors to Edwin Ferris (152-197-231-356); Mrs. G.R. Fettic, succeeded by A.H. Ramelli (294); Antonio Figone, succeeded by Natale Denivi (528) and Mary and Plenio Sorani (529); Mary S. Finley (29); Peter Finn and Co-owners, successors to Louis Avansino (467); Christopher J. Finn and Peter Finn, succeeded by Peckham and Brooks (474); E. Fiori (427); Flanagan Addition or J.N. Evans Estate Company, incorporated (130); Patrick L. Flanigan; H. Fleishacker and Scheeline Estate (588); Mrs. Alice Foley (59); C.D. Folsom (282); Ed Foreson (200-233); W.H. Frazer (319); W.H. Frazer, succeeded by J.T. Bisagno, Ferdinand Bisagno and T.J. Bisagno (322); Leo E. and Frances A. Frey, successors to Louise Frey (179-257–) Mrs. Harry Frey, succeeded by Aguerrebere and Marinelarina (66); Clyde Frohlich, Hilda Frohlich and Willie Frohlich (509-517); W.F. Fugate (421); J.M. Fulton, Theodora Fulton and C.L. Taylor and grantees (398-399); Mrs. P.E. Fulwider, succeeded by C.M. Copelin (545); Mrs. P.E. Fulwider (544).

(G) C. Gadda and W.F. Gadda, successors to Elizabeth Evans (283); Galena (38); Frank J. Gallery, intervenor, successor to C. G. Knox (116-117); C.W. Galloway (160); J.C. Games (246); Mrs. E.C. Galsgie, successor to Fannie T. Haynes (446); M.C. Galvin and J. Galvin, successors to E.A. Brainard (323); Garavanta Land and Livestock Company, incorporated, successor to John Garavanta (635-636); Garavanta and Pessi, succeeded by H. Bersani, intervenor (83); Luigi Garaventa, succeeded by Quilici and Panelli (625); David Gardella and Stefano Capurro, successors to D. Zolezzi (736); Felice Gardella (613); Joseph Gardella (644); L. Gardella, intervenor, succeeded by L.F. Johnson (50-97); Paul Garson, intervenor, successor to Chris Theusen (46); Angelina Gasparri, successor to Mary De Remer (350); C.J. Gault, succeeded by Otto Olsen (326); Dan Gault and James Gault (313-314); Eli Gauthier and P. Leauthier, successors to Minnie E. Ward (417); Domingo Gavica (19); C.A. Gelmstedt (199-232); Martin Geraghty, successor to Peter Murphy (622); Pearl A. Gerard, succeeded by Fritz Niebuhr (590); S. Geravanta (81); S. Geravanta, successor to Degiovanni Brothers, intervenors (82); Andrew and Julia Ghiggeri, succeeded by J.B. Pecetti, intervenor (73); Madalina Ghiggeri and Bart Ghigleri, succeeded by D. and P. Cerfoglio (70); Annie Ghigleri, Andrew Ghigleri and John Ghigleri, for Andrew Ghiggeri, succeeded by E.D. Maddalina (185); B. Ghiggeri, successor to A. Litch Estate (240); Andrew Ghigleri and Peter Ghigleri, successors to John F. Kleppe (600); Ernesto Giannattei, or successors to Walter Berry (470-471); J.W. Gilpin, succeeded by Mrs. Fred Jones (541); G. Ginocchio, successor to Mrs. Clara Streiff (429); G.B. Ginnochio, succeeded by Blanche Mae Belle Vanderwerker (382½); Nick Ginnocchio (80-190); Giovannia and Felipelli, succeeded by Gerolemo Zolezzi

(86); H.L. Gleason, successor to A.C. Armstrong (174); Glendale Irrigating Ditch Company, incorporated, (612); Betty Glenn, succeeded by Aguerrebere and Marinelarina (66); F.W. Glenn, succeeded by Dondero (62); John Gotalli, succeeded by Casinelli and Silvey (583); George Gould, succeeded by Humphrey Supply Company, incorporated, (533); and by G. Ceresola (535); Will E. Gould (500); E.B. Graves, succeeded by A. Van Derhoof (536); P.S. Greeley and Mrs. C. Mitchell (552); L.A. L. Green, successor to Vanetti and Capurro (661-673-674); John Gregorich, successor to John S. Sheehan (553); Della Grignon (40); George Grose successor to Antonio Azaveda (327-328); James Grose (329); Ralph M. Guthrie (461);

(H) E.L. Hall, successor to Mary De Remer (444); Hans Hanson, intervenor (49); Mrs. Mette Hanson, succeeded by Henry S. Hanson and Martha W. Landis (180); J.L. Hash (207½-265½); U.S. Hanson (681-682-683); J.E. Harris, succeeded by Robert Nelson (61); W.J. Harris (271½); Mrs. Ed. Harvey, successor to E.L. Bickford (540); E. Hawkins and Joe Ryans, successors to J.J. Barton (154); P.A. Hawkins (373); Archie E. Haydon, succeeded by I.M. Lewis (343); Mrs. E.A. Haydon, succeeded by Mrs. A. Trosi (346); Fannie T. Haynes, succeeded by Mrs. E.C. Galsgie (446); Mrs. L.V. Herman, successor to Mary De Remer (255); E.S. Heward, successor to R.W. Williams (389); Albert A. Hibbard; J.M. Higgins (411); Thomas Hill, succeeded by John P. Williams (628-629); Himmelberger, succeeded by W.H. Jones (157); Helena E. Hogan (102-142); Hogan and Muran (508); Holcomb Brothers, successors to Jeanette and James Burke (669-706) and Nick Sorgi (669-702-703-704-705-706); G.R. Holcomb Estate Company, incorporated, (74-144-191-218-670-707-708-719-720-728 to 732); George E. Holesworth, succeeded by

Charles W. Mapes (510-514); C.C. Hollenbeck (615); Hugh Holstrum (21-see 724b.c.); Otto Holz, successor to Mrs. F.T. Cole (559); Mrs. Otto Holz, successor to G.C. Strader and C.E. Crouch (560); Ben Howard or Estate of or successors to Mary J. Howard (716); Mary J. Howard, or successors or J.H. Christensen (717); H.G. Hubbard (165); H.G. Humphrey (457); H.G. Humphrey, successor to Margaret Schaffer Estate (408); H.G. Humphrey, successor to William H. Winfrey and Edwin E. Winfrey (409); Humphrey Supply Company, incorporated (296-611); Humphrey Supply Company, incorporated, successor to Mary J. Kinney (579-580); Humphrey Supply Company, incorporated, successor to George Gould (532-533); Frances Hunken, successor to H.C. Hunken (91); Hunter Creek Water Company, incorporated, succeeded by Truckee River Power Company, incorporated (725-726).

(I) George Imes, succeeded by Daisy Adams (435); Martin Inda and Romaldo Irrabarren, successors to George A. Percival (597); Indian Colony, by U.S. Indian Service, successor to Ione Gould Lewis (499); Indian Lands, Pyramid Lake Reservation, by United States (1-2); George W. Ingalls and Eliza Ingalls, succeeded by August Salet (396); Romaldo Irrabarren and Martin Inda (597); Pasquale Istrice, successor to D. Ferrari and Caterina Ferrari (599); Italian Beneficial Society, succeeded by B. Curano (254).

(J) B.A. Jacobi (434); Chris Jacobsen, successor to J.C. Murry and wife, Agnes Murry (595); M. Jepsen and M. Jacobsen, succeeded by James Nelson (318); Anna James (286); R.O. James (241½); R.T. Jenkins, successor to Luigi Avansino (238); Anna Jensen, successor to J.R. Tarner (547); A.L. Jensen, successor to L.M. Christensen

(76-78); J. Jensen (32); Martin Jensen, successor to Grant E. Rice (591); P.S. Jensen, successor to G.N. Clute (349); P.S. Jensen Estate (375); Robert Jensen, succeeded by Kathryn N. Ray (496); R.C. Jensen, succeeded by Louis M. Nelson, intervenor (118); R.C. Jensen, intervenor, successor to Reno Power, Light and Water Company, incorporated, and to J. Pincolini (132); M. Jepsen and M. Jacobsen, succeeded by James Nelson (318); James Jepson (538); James Jepson, succeeded by J.M. Wyckoff (537); John Johnson (287); John Johnson successor to John W. McCollum (304); Leonidas Frederick Johnson, successor to Stefano Capurro and to L. Gardella, intervenor (50-97); Mahalia E. Johnson (431-432-433); Charles Jones and Jane Jones (605-606-607); D.P. Jones, successor to Mary De Remer (443); Mrs. Fred Jones, successor to J.W. Gilpin (542); John Jones (30); J.W. Jones, successor to Mary De Remer (441); W.H. Jones, successor to Himmelberger (157).

(K) Sarah Kahn, succeeded by Charles W. Mapes (601); J.P. Kane, succeeded by F.D. Black (437); Patrick J. Kelley, succeeded by Mark L. Yori (302-303); William F. Kestell (460); A.E. Kibble, lessee Mrs. L. Simas, intervenor (110); Albert Kietzke (414-415-416); Mary H. Kinney, succeeded by Humphrey Supply Company, incorporated (579-580); John F. Kleppe (617); John F. Kleppe, succeeded by Andrew and Peter Ghigleri (600); C.G. Knox, succeeded by Frank J. Gallery (116-117); F.M. Konkel and B.L. Konkel, successors to C.A. Swart (558); J.H. Kormier, successor to N.J. Ploder (554); A.R. Kosswig, succeeded by Mrs. John Schwandt (567); N.B. Kyker, successor to Mrs. S.M. Stephens (550); E.C. Kylander, successor to Mrs. O.J. Boies (539);

(L) A.T. Laffranchini, succeeded by Toni Saralagui or Antonio Savellegin (239); G. Laiolo (168); P. Laiolo, successor to George W. Bidleman (472); M.A. Laking (548); W.E. Lampson and F.C. Savage, succeeded by Dr. F.H. Phillips (247); W.E. Lampson and F.C. Savage, succeeded by W.E. Lampson (248); Mrs. E.J. Lanagan (419); A. Landa and Charles Faretto, successors to Joe Faretto Estate (67); Martha W. Landis and Henry S. Hanson, successors to Mrs. Mette Hanson (180-723½), Mrs. A.H. Lane (274); L.M. Largomarsino, succeeded by Carl J. Lockwood (621-623); Thomas Largomarsino, executor, succeeded by Carl J. Lockwood (621-623); A.L. Laughton, intervenor succeeded by J. Atcheson and L.R. McKenzie (48); Charles Laughton, successor to George and Ella Laughton (394); Frank A. Laughton, intervenor, (104); Nancy J. Laughton, succeeded by Abbie W. Quinn, intervenor (103); T.B. Laurie, succeeded by H.G. Hubbard (165); Robert Lavoie (164); G. Lavagnino and C. Lavagnino (325); Peter Lawless, succeeded by Constantino and Bruno Petri (624); Peter Leauthier and Eli Gauthier, successors to Minnie E. Ward (417); Frank M. Lee, or successors (376); Leete Syndicate (278); Ione Gould Lewis (498); Ione Gould Lewis, succeeded by the United States (499); I.M. Lewis (342-344); I.M. Lewis, successor to Archie E. Haydon (343); A. Litch Estate, succeeded by B. Ghiggeri (240); Carl J. Lockwood, successor to L.M. Largomarsino and to R. Noce Estate (621-623); Guilio Lombardi (71); A.L. Longfield and Trannie Longfield, succeeded by Trannie Bridgeman (223); Mrs. Lonkey, succeeded by Mrs. Sorenson (41); Guiseppe Luchetti and Gia Batta Luchetti (571); W.P. Lyell, succeeded by D.W. Ridenour (226-227); John J. Lyons, succeeded by Ben Barbash and Lou Cohn (593); James S. Lyons (668-700 to 701); James S. Lyons, successor to Nick Sorgi (646);

(M) Charles E. Mack (372); Charles E. Mack and W.L. Semenza (—); E.D. Maddalena, successor to Andrew Ghiggeri (185); G.D. Maddalena, intervenor, successor to A.F. and Margaret A. Swall (72-186); Charles Maggiolo, succeeded by Matteo Ramelli (388); C. Maggiolo, successor to Ben Raggio (300); Mat Magzan, or Matt Mazzaro (162); George W. Mapes, succeeded by Charles W. Mapes (602); George W. Mapes, succeeded by Martino Marchi (234); George W. Mapes, succeeded by Charles T. Sorgi (362); George W. Mapes, succeeded by H.D. Sanborn (235); George W. Mapes, succeeded by N.L. Neilson (363); Charles W. Mapes, successor to George W. Mapes (602); Charles W. Mapes, successor to Alt Estate (601); Charles W. Mapes, Successor to George Holesworth (510-514); Emma J. Marble, formerly Emma J. Williams, now Emma J. or Mrs. George R. Bidleman (485-486-487-488-489); Giovanni Marchi (58); Martino Marchi, successor to George W. Mapes (234); Marinelarina and Aguerrebere, successors to B.A. Cooper Estate (66); Frank Marks (13-30); S. Martinengo, succeeded by P.G. Avansino (413); Frank P. Martin, succeeded by B. Pacini (339); H.C. Masters (175); (Mason's Cemetery – see Trustees); John M. Matley and wife, Annie M. Matley, successors to Martha Steinberger (519-522); John M. Matley and wife, Annie M. Matley, successors to Minnie E. Ward (518-523); Narciso Matteoni, of successors to Walter Berry (470-471); H. Maxson (402) and H.B. Maxson (401); Agatha Maxwell and William Maxwell (516); Matt Mazzaro or Matt Magzan (162); Patrick McCarran (626-627); Henry S. McLeod and wife, Lillian M. McLeod, successors to Agnes Nield (155); Sarah McClure (358-359); John McCollum, succeeded by A.H. Ramelli (289); John W. McCollum, succeeded by John Johnson (304); J.B. McCullough, succeeded by Attilo Deimi and Venanzio D. Andrea (345);

E. McIntosh, successor to A.F. Neidt (122); Stewart McKay, succeeded by C.J. Christensen (610); L.R. McKenzie and J. Atcheson, intervenors, successors to George Christensen and A.L. Laughton (48); Mrs. N.E. McMurdo (321); Albert McPhail; Marino Melillo, successor to J.W. Titus (170); Maude Menardi, succeeded by Eugenio Arbico (501); W.H. Menke (438); Webster Millen (426); C. Mirando, succeeded by Felix Turillas and Amado Yriarte (288); Mrs. C. Mitchell, succeeded by P.S. Greeley (552); Mrs. Phillipine Mitchell (31); Moana Mineral Springs Company, incorporated, (261); William H. Moffat (447); Joe Mongolo (250); Louis Mongolo (584); Frank Monte, succeeded by M.P. Depaoli (641); John Monte (634); Theodore A. Morrill and James Morrill; Chris Mortensen, M. Mortensen, Jr., and Sophus Mortensen, intervenors (47); A. Mosconi, succeeded by Frank Simoni and G. Simoni, intervenors (106-107); C.T. Mullins, succeeded by Steve Borsi and Antone Borsi (53); Peter Murphy, succeeded by Martin Geraghty (622); James Murray and William Murray (358-359); Sam Murray (359-360); Sam Murray, succeeded by H.D. Sanborn (235); John C. Murry and wife, Agnes Murry, succeeded by Chris Jacobsen (595).

(N) T.J. Nash, succeeded by F.C. Smith (565); W.C. Neasham, succeeded by George H. Calligan (568); A.F. Neidt, succeeded by E. McIntosh (122); A.A. Neilson (664-687-688); A.C. Neilson (666-692-693-694-695); H.C. Neilson (667-696 to 697); N.L. Neilson, successor to George W. Mapes (363); Nels P. Neilson; N.T. Neilson succeeded by R.L. Pryor (563); James Nelson, successor to M. Jacobsen and M. Jepsen (317-318); Louis M. Nelson, intervenor, successor to R. C. Jensen (118); Robert Nelson, successor to J.E. Harris and to the Overland Realty

Company (60-61); Nevada Gunite Manufacturing and Construction Company, incorporated, succeeded by J.C. Games (246); [(State of Nevada, not a party, rights estimated, – Hospital for Mental Diseases (11-410); University Stock Farm (264); University of Nevada (281); University Experiment Station (384); State Agricultural Society (385)]; Nevada Steamboat Springs Company, incorporated (698); Nevada Stock Farm, incorporated, successor to Mrs. Alice Thoma (452); Nevada United Mines Company, incorporation, succeeded by Joe Carmella (324); Francis G. Newlands, James Newlands, Jr., F.G. Newlands Company, incorporated (201); The Newlands Company, incorporated (236-257); L.C. Nicholas) (39); Fritz Niebuhr, successor to Pearl A. Gerard (590); A. Nield (156); Agnes Nield, succeeded by Henry S. McLeod and wife, Lillian M. McLeod (155); George S. Nixon; Nixon Estate Company, incorporated (—); R. Noce Estate, succeeded by Carl J. Lockwood (621-623); North Truckee Ditch Company, incorporated (525);

(O) Amelia O'Brien (241); J.F. O'Brien (244); J.F. O'Brien, succeeded by D.W. Reilly (245); J.F. O'Brien, succeeded by D.C. Wheeler, Inc. (246); [Odd Fellows Cemetery – see Trustees (120);] E. Olinghouse, succeeded by M.P. Depaoli, W.J. Ceresola, J.A. Ceresola and Estate of Louis M. Ceresola (639-640-643-645); J.D. Oliver (57); Antonio Olivia (293); Otto Olsen, successor to C.J. Gault (326); S. Oppio, successor to Henry Stevens (609); Joe M. Orchio (167); Orr Ditch and Water Company, incorporated, successor to Orr Water Ditch Company (267-320-341); Dennis O'Sullivan, successor to J.D. O'Sullivan (311); J.R. O'Sullivan, successor to J.D. O'Sullivan (312); Overland Realty Company, succeeded by Robert Nelson (61);

(P) B. Pacini, successor to Frank P. Martin (339); Mrs. Page, succeeded by Mrs. Sorenson (41); G. Panelli and R. Quilici, successors to L. Garavanta (625); S. Parlanti, successor to J.E. Petersen (573); R.W. Parry, succeeded by Ernesto Canepa (51); F.G. Patrick (200-242); Angelina Pecetti (691); F.A. Pecetti, successor to John Pecetti (77); John B. Pecetti, intervenor, successor to Andrew Ghiggeri and wife, Julia Ghiggeri (73); Alfred Peckham, James Peckham and George Peckham (464); George E. Peckham (463); Alfred Peckham and Charles W. Brooks, successors to Christopher J. Finn and Peter Finn (474-475). – Peoples Drain Ditch Company incorporated; George A. Percival, succeeded by Martin Inda and Amaldo Irrabarren (597); Pessi and Garavanta, succeeded by H. Bersani, intervenor (83); Anna M. Petersen (592); J.E. Petersen, succeeded by S. Parlanti (573); R.S. Petersen and wife (310); Constantino Petri and Bruno Petri, successors to Peter Lawless (624); Domingo Pezzi (69); Dr. F.H. Phillips, successor to W.E. Lampson and F.E. Savage (247); George S. Phoenix, succeeded by Mrs. Marie Yori (249); Santino Piazzo, intervenor (138); Lorenzo Picetti, Luigi Picetti and Pietro Picetti (68); Julius Pieh, successor to Federal Trust Company (253); Pearson and Cafferata (244½); William Pierson, succeeded by E.R. Albee and Leora Albee (638); A. Pincolini, intervenor (88); Joseph Pincolini, intervenor (137); Joseph Pincolini, succeed by R.C. Jensen, intervenor, (131-132); Victorio Piretto (149); N.J. Ploder, succeeded by J.H. Kormier (554); E. Plumb Estate (153); R. Plumb Estate (198); Irene Poole and James Poole, succeeded by Mrs. Ed. Calhoun (551); E.J. Posvar, succeeded by T.H. Blundell (637); M. Pradere, successor to C.D. Dixon and M. Yribarren (340); H.J. Pratt, intervenor (128-129); R.M. Price, trustee (491); Vernon Price (521); Mrs. E.A. Proctor (549); S.J. Prose,

succeeded by Charles E. Catoir and Joe P. Strathman (397); John H. Prosole, intervenor (85); Louis Prosole, intervenor (87); R.L. Pryor, successor to N.T. Neilson (563); Pyramid Lake Reservation (see United States).

(Q) G.B. Questa, succeeded by Mark L. Yori (302-303-404); Guilio Quilici, of successors to Walter Berry (470-471); R. Quilici and G. Panelli, successors to L. Garavanta (625); Peter Quillici, intervenor, successor to G.S. Denton and G. Ricci (17); Abbie W. Quinn, intervenor, successor to Nancy J. Laughton (103); E.F. Questa (74).

(R) Antonio Raffetto (140-292-614); B. Raggio, succeeded by B. Rosasco (299-386); B. Raggio, succeeded by C. Maggiolo (300); B. Raggio, succeeded by Mark L. Yori (387); A.H. Ramelli, successor to J. McCollum (289); A.H. Ramelli, successor to Mary G. Bellamy and Mrs. G.R. Fettic (294); Alfonso Ramelli, successor to D. Rosasco and P. Rosasco (295); Caesar A. Ramelli (709-710-711-712-713-714); Matteo Ramelli, successor to Charles Maggiolo (388); Kathryn N. Ray, successor to Robert Jensen (496); Charles L. Raymond and Elizabeth E. Raymond, succeeded by C.L. Richards (378); Florence M. Read (430); Florence M. Read and Mrs. R.J. Read, succeeded by Mrs. Adalina Trosi (346-347-348); John Read; Antone Rebori (374); H. Reid, succeeded by Reno Golf Club (262); D.W. Reilly, successor to J.F. O'Brien (245); Mrs. M. Reilly (243); John Reinmiller (241); Reno Brewing Company, incorporated (400); City of Reno (371); Reno Golf Club, successor to L.W. Berrum (178-262); Reno Power, Light and Water Company, incorporated, succeeded by The Truckee River Power Company, incorporated, (95-96-99-100); Reno Power, Light and Water Company, incorporated, succeeded by R.C. Jensen, intervenor (131-132); Reno Press Brick Company, incorporated (272); Henrietta Revert, succeeded by Walts

Brothers (93-724); J.P. Reynolds, successor to T.H. Blundell (630); G. Ricci, succeeded by Peter Quillici (17); A.L. Rice; Grant E. Rice, succeeded by Martin Jensen (591); Mary E. Rice, succeeded by W.G. Smith (265-462); Warren G. Rice, succeeded by A. Capurro (594); C.L. Richards, successor to T. Parry Tyson (377); C.L. Richards, successor to Charles L. Raymond and Elizabeth E. Raymond (378); Richardson and Degman, succeeded by Carl Elges (64); D.W. Ridenour, successor to W.P. Lyell (226-227); Henry Riter (291); Riverside Mill Company (10); F. Roberti, succeeded by Antone Borsi and Steve Borsi (53); Mrs. Lena Robertina, succeeded by Rick De Bernardi (56); Mrs. N.L. Robinson, succeeded by Mrs. N.L. Theusen (543); D. Rogero, successor to Schaffer Estate (390); B. Rosasco, successor to B. Raggio (141-299-386); Carlo Rosasco, succeeded by C.P. Ferrel (305-407½); Carlo Rosasco, successor to Schaffer Estate (407); D. Rosasco and P. Rosasco, succeeded by Alfonso Ramelli (295); G. Rosasco, intervenor, successor to I.J. Walker (126); Joseph Rosasco, intervenor (139); Fred Ross (26); O.C. Ross, succeeded by Andy Bonamici, G. Sorani and S. Sorani (581); F.M. Rowland (297); F.M. Rowland, succeeded by John Aratzabel (298); Joe Ryans and E. Hawkins, successors to J.J. Barton (154).

(S) John Sable (32); August Salet, successor to G.W. Ingalls and wife, Eliza Ingalls (396); John Salisbury, succeeded by Chris Theusen (90); John Salisbury (18); Signelio Salvatore (109-193); H.D. Sanborn, successor to George W. Mapes and J.J. Murray (96); Toni Saralagui, or Antonio Savellegin (239); P. Saturno, succeeded by Nora Clark (269-364); Viola M. Sauer and Ella Bailey (655-656-657-658-659-675); A.F. Scanarino (273); J.A. Scanavino (440); Margaret Schaffer Estate, succeeded by D. Rogero

(390); A.E. Springer (395); Carlo Rosasco (407), and H.G. Humphrey (408); Scheeline Banking and Trust Company, succeeded by John P. Williams (628-629); Scheeline Estate and H. Fleishacker (588); Agostino Schiappecasse (148-229); Lizzie Schmitt (270½); J.H. Schroeder, successor to Mrs. Bessie Bovee (492); William H. Schroeder; Mrs. John Schwandt, successor to John Schwandt and A.R. Kosswig (567); F. Sciaroni (306); J.M. Scott, successor to Thomas Scott (309-408¾); Scott Ranch Ditch Company (490); Cora May Sellman (715); Antonio Semenza (585); W.L. Semenza and C.E. Mack; J.J. Shannon, intervenor (121); S. Sharp (35); John H. Sheehan, succeeded by John Gregorich (553); Mrs. Mary Sherman (127); Lucy E. Short and William C. Short, intervenors (480-481-482-483-484); Salvatore Signelio (109-193); Dora Silvey (589); G.A. Silvey and P. Casinelli, successors to John Gotalli (583); Mrs. L. Simas, intervenor (110); Frank Simoni and J. Simoni, intervenors, successors to A. Mosconi (106-107); Ella M. Smith (see now Ella M. Bailey); F.C. Smith, successor to T.J. Nash and Comer (565); L.D. Smith (652-653-654); Preston B. Smith (275); W.G. Smith, successor to Mary E. Rice (265-462); H.E. Snare, successor to Mary De Remer (442); W.M. Snare, intervenor (113-114); G. Sorani and S. Sorani, of successors to O.C. Ross (581); Mary Sorani and Plenio Sorani (529); Mrs. Sorenson, successor to Mrs. Lonkey and Mrs. Page (41); Charles T. Sorgi, successor to George W. Mapes (361); Nick Sorgi, succeeded by J.S. Lyons (646); Nick Sorgi, succeeded by Holcomb Brothers (669-702 to 705); South Side Drain Ditch Company, incorporated; South Side Irrigating Canal Company, incorporated (228); Southern Pacific Company, incorporated, lessee of Central Pacific Railway Company, incorporated (526-527); Spanish Spring Valley Ditch Company, incorporated (341); A.E. Springer, successor to Schaffer Estate (395); State of

Nevada (see Nevada, state of); Steamboat Canal and Irrigation Company, incorporated, successor to Steamboat Canal Company (16); Steele Corporation, (incorporated) (524-596); James Steele; Martha Steinberger, succeeded by Annie M. Matley and John B. Matley (519-522); C.L. Steiner, successor to R.N. Brannin (557); Henry Stephens, succeeded by S. Oppio (609); Mrs. S.M. Stephens, succeeded by N.B. Kyker (550); Carl Stoddard (449); Charles H. Stoddard (381-450); Cora N. Stoddard; J.E. Stout, successor to W.H. Davis (566); Joe P. Strathman and Charles E. Catoir, successors to S.J. Prose (397); Mrs. Clara Streiff, succeeded by G. Ginocchio (429); G.C. Stroder, succeeded by Mrs. Otto Holz (560); John B. Sturla, succeeded by M.P. Depaoli (641); Matie Summerfield, later Matie D. Carter, succeeded by D.C. Wheeler, Inc. (incorporated) (182-207); B. Sundin (333-334); A.F. Swall and Margaret A. Swall, succeeded by G.D. Maddalena, intervenor, (72-186); Emma J. Swan, successor to George Imes and Andrew Drake (436); Augusta Swanson (307-407¾); C.A. Swart, succeeded by F.M. Konkel and B.M. Konkel (558).

(T) Frances M. Taber, formerly Frances M. Whitburn (123-364½); Angeline Tachino, Guy Tachino, John Tachino, Joseph Tachino, Mary Tachino and Rosie Tachino (665-691-692); S.F. Tallman, succeeded by Mrs. E.A. Drolette (169); J.R. Tarner, succeeded by Anna Jensen (547); Sam Tarner, successor to Anna Taylor (546); C.L. Taylor and successors (398-399); Anna Taylor, succeeded by Sam Tarner (546); H.S. Teasdale, successor to W.H. Corbiere (556); Tessier (42); Chris Theusen, succeeded by Paul Garson, intervenor (46); Chris Theusen, successor to John Salisbury (90); Mrs. N.L. Theusen, successor to Mrs. N.L. Robinson (543); Mrs. Alice Thoma,

succeeded by Nevada Stock Farm, incorporated (452) and Truckee Meadows Slaughtering Company, incorporated (458); Peter Thomsen, successor to Stephen Ede and Phillip Ede (215-216-217); Reuben C. Thompson and Mabel E. Thompson (379); J.W. Titus, succeeded by Marino Melillo (170); Mrs. Adalina Trosi (337-338-346-347-348); Angelo Trosi, succeeded by J.E. Trosi (733 734-735); Truckee Meadow Slaughtering Company, incorporated, successor to Mrs. Alice Thoma (458); The Truckee River General Electric Company, incorporated, succeeded by Truckee River Power Company, incorporated, (5-6-7-8-9-96-97-98-99-100-359, 725, 726); Trustees, Reno Lodge No. 14, Independent Order of Odd Fellows, intervenors (120); Trustees Reno Lodge No. 13, Free and Accepted Masons, intervenors (120); Felix Turrillas and Amailo Yriarte, successors to James Burke and Peter Burke (288); R.C. Turritin, trustee (see Margaret Schaffer Estate); A. Turtarolo (23); T. Parry Tyson, succeeded by C.L. Richards (377).

(U) Lucy M. Ulyatt, succeeded by Alex Crotta (576-577); United States [Newlands Project, formerly Truckee-Carson Project; Derby Canal and Lahanton Reservoir (3), Lake Tahoe (4), Pyramid Lake Indian Reservation (1-2); Reno Indian Colony (499)]; University of Nevada (281-384); University Stock Farm (264); Unknown Owners (28-33-43); Mary F. Upson (301).

(V) Blanche MaeBelle Vanderwerker (382½); Blanche MaeBelle Vanderwerker, succeeded by Julius Pieh (253); A. Van Derhoof, successor to Mrs. William Calligan and E.B. Graves (536); J. Vanetti, succeeded by L.A.L. Green (661-673-674); Margaret Van Meter (331-332); Venanzio D. Andrea and A. Deini, successors to J.B. McCullough

(345); Verdi Lumber Company, incorporated, (7-20); Verdi Municipal Use (45); Verdi School (44).

(W) Wadsworth Light and Water Company, incorporated, (13-14-15-635); I.J. Walker, intervenor (125); I.J. Walker, succeeded by G. Rosasco, intervenor (126); Morgan Wallace (555); Frederick Walts, Guy W. Walts and Herbert Walts, as Walts Brothers (251-453-454-455), successors to Henrietta Revert (93-724a-b-c-d-e); G.W. Walts (203); William Walts (252); Mrs. Minnie B. Ward, succeeded by Eli Gauthier and P. Leauthier (417); and John B. Matley and Annie M. Matley (518-523); George D. Washburn and Mary Washburn, successors to S.F. Washburn (632); Henry Washburn (633); Washoe County [Hospital (497), Verdi School (44)]; Washoe Lake Reservoir and Galena Creek Ditch Company, incorporated (660 to 672); Washoe Power and Development Company, incorporated, succeeded by Truckee River Power Company, incorporated (8-96-97); Robert Watson (423); Wells Estate Company, incorporated (428); Otto Werner, successor to Katherine Werner (365); C.W. Westover (158); D.C. Wheeler, Inc., (65-181-182-195-207 to 208½-721-722-723); successors to Matie D. Carter (182-195-207); successors to Nevada Gunite Manufacturing and Construction Company, incorporated (246); succeeded by University Stock Farm (264); Mrs. N.J. Wheeler (715); Frances M. Taber, formerly Frances M. Whitburn (123-364½); Samuel Wilbur (425); Sam M. Wiley (24); Emma J. Williams, later Emma J. Marble (485-486-487-488-489); J.F. Williams, succeeded by C.M. Copelin and Mrs. P.E. Fulwider (545); John P. Williams, successor to Thomas Hill (628-629); R.W. Williams, succeeded by E.S. Heward (389); William H. Winfrey and Edwin E. Winfrey, succeeded by H.G. Humphrey (439) and Pietro Casinelli

(403); Christ T. Wogan (737-738); J.L. Wollam, intervenor (115); J.L. Wollam (268) and succeeded by F.V. Avilla, intervenor (119); Elizabeth J. Wright, John W. Wright, Sarah M. Wright and Walliam G. Wright (221-222); H. Reid, succeeded by Reno Golf Club (262); J.M. Wyckoff, successor to James Jepsen (537); Wilkinson Brothers and Ennor, successors to T.S. Ferretto and to others (179½-206-259).

(Y) Mrs. Marie Yori (603-604), successor to George S. Phoenix (249); Mark L. Yori (502), successor to Eddystone Farm and Produce Company and G.B. Questa (302-303-404), successor to B. Raggio (387); M. Yribarren, succeeded by M. Pradere (340).

(Z) D. Zolezzi, succeeded by Stefano Capurro and David Gardella (736); Gerolemo Zolezzi, intervenor, successor to G. Fellipelli (86).

(AA) Ackerman, Glenn W. & Ruth (247); Acrea, D.L. (431, 432); Adams, Wayne B. (250); Agnes, John (458); Aguerrebere, Martin (138); Ah You Est., A.R. Schindler, Trustee for Wayne & Roland Asher (250); Aldabe, Bert & wife Marie (119); Alexander, Henry (247); Allen, Ira T. & wife (179); Allison, Geo. (278, 287, 304); Altic, Edith B. & A.L. (366); American Loan Society (454); Anderson, Chas. J. (367); Anderson, Irene (574, 575); Anderson, Pete (208); Anderson, Robb & wife Ida (232); Anderson, Tom & Mildred (452); Anderson, Wm. H. & wife Zelia A. (250); Andrews, W.L. (208); Annett, Sheldon & Audrey (249); Arden, John (59); Arigoni, A.M. & wife Natalie (247); Armstrong, Alice Powers (64, 173); Atcheson, Katherine C. (48); Atkinson, Frances B. (177); Atkinson, Paul E. & wife Marie (119); Aust,

W.T. (244); Austin, W.C. (.....); Avansino, John (184, 214); Avansino, Louis (143); Avansino, William and Silvo (368); Avanzino, Jack (597); Avanzino, John L. (368); Avanzino, Thomas (457); Ayres, Irvin L. (55); Azcarata, Frank (622); Aznarez, Eusebio (247).

(BB) Baggenstos, Manual (498); Baker, Ella A. (574), 575); Baker, Harold (574, 575); Baker, Herman (574, 575); Baker, Isabelle (574, 575); Baker, Nellie (574, 575); Baker, Mildred Hobe & Charles J. (717); balata, Louis A. & wife Hazel (459); Bamberger, Geo. E. (503, 504, 505); Baragelata, Joe (592); Bares, Raymon F. & wife Pauline (249); Barlow, Wm. H. & wife Lennie (452); Barry, Mrs. Clara (207); Bartholomew, Frank & Antonia (274); Bazell, Novice & Nable (502); Beasley, Bud L. & wife Nellie E. (55); Beecher, Helyn (177); Beecher, Wm. T. & wife Janett (247); Beedle, Hadley (250); Beemer, Louise B. (454); Beemer, William (55); Beko, Tom & Willie (454); Belford, John S. (191); Bell, Enock J. & wife Carrie (209, 210); Belli, Mario (50, 50a, 97, 97a); Belmont, Adeline (454); Bennett, Delbert & wife Marjorie R. (454); Benson. Wm. B. & wife Anna (424, 425); Berg, Carl & wife Erma (177); Bergeret, L.A. (235); Bergstrom, R.H. (467, 468); Bernhard, Fred & wife Hazel (247); Berry, Paul & Gladys (456); Berrum, Karoline (261); Bertoluochi, C.A. (454); Bevilacqua, Emilio (209, 210); Biltz, Norman (64, 178½, 204, 206, 247, 249, 250); Birdsall, Fred R. & Celia T. (454); Bishop, Loen F. & wife Ruby A. (153); Bitner, E. Clyde & wife Angeline (249); Black, Alton & wife Louise (208); Black, Edna May (177); Blackmar, Francesca (628, 629); Block, P.G. (431); Blumberg, Kitty (208½); Bohal, Les (205); Bonham, Greely W. (431, 432); Bonnell, Eulah (177, 512); Bosq, August (136, 136a); Bottomly, Ralph (177); Bowen, Grant L. & wife True Gifford (247); Boyd, John B. (130);

Boylan, Anna C. (358-359); Boswell, Alice (409); Boyne, Albert B. (454); Brennan, Austin J. & Margaret (123); Bresson, Ernest E. & Raymond Keller (428); Britnell, Lawrence (498); Browder, M.D. (205); Brown, Carl & Nellie (498); Brown, E.L. (431, 432); Brown, Elmer L. & wife Marine (431, 432); Brown, F.W. & wife Anna (209); Brown, Mrs. H.H. (457); Brown, Hazel & Howard (179, 251, 252, 205); Brown, Irvin C. & wife Jean Filler (133); Brown, Julia Angeline (141, 299); Brownell, Earl & Myrtle (498); Brundidge, Alva A. (454); Brunetti, Frank & Nancy (744); Brussard, Wm. & wife Evelyn (208); Bryson, Lena (249); Bunge, L.W. & wife Helen (136, 136a); Burchett, Chloe (.....); Burge, Lee and wife Mildred (206); Burke, N.E. & wife Virginia M. (191); Buchanan, Freeman M. & wife Lida M. (133); Burns, Robt. James & wife Kathryn Pine (247); Burris, Charles W. & wife (699, 699a); Buscaglia, D. (181, 208); Busey, Douglas A. & wife (243); Bushing, Clarence H. (534); Butler, Fred & Violet (452); Butner, W.R. & S. (208½); Bates, Geo. & Earl, Geo. Wilkinson (412); Browne, J.J. & Nevada L. (431); Bruce, Martha R. (431); Bruce, M.R. & Mary I. Ryan (431).

(CC) Cafferata, August J. (621, 623); Cafferata, F.J. (529); Cafferata, Harold & wife Janet R. (243); Cafferata, M.E. (408); Caffrey, Willis & wife Dorothy (72b, 73, 76); Cairns, J.H. (133); Callahan, Anne Elizabeth (647, 647½); Cameron, R.H. & Lee Minor (177); Campbell, Edwin & Estella (407); Campbell, James L. (244); Campbell, Willard V.B. (65, 181, 208); Canepa, Fred (54, 101); Canepa, G. (170); Canepa, Louis (51, 94, 94a); Canepa, William (94, 94a); Cannon, Aquilla & wife Louise (209, 210); Cantlon, Vernon (634); Cantrell, Robert A. (256); Capitani, Joe & wife Josephine (153); Caples, Hazel W. (454); Capurro, B. & Ernest (52, 52½, 146, 727, 727½); Capurro, Joe & Pete

(405, 406); Capurro, John (454); Capurro, Louis J. & William J. (466, 472); Capurro, Louisa (459); Capurro, Rosemary & Victor, Dave Gardella, (408¾, 136, 136a, 398, 407½, 407¾, 408½); Capurro, Victor (342, 137, 139, 136, 136a); Caramella, Katherine (457, 408); Caramella, S. (459, 600); Carano, S.J. (177); Cardinal, Ralph F. (454); Cardinellia, Geo. & wife Gertrude (431); Carlton, Ralph (438); Carpenter, Adrie (443); Carver, Edna J. (431); Carver, James & wife Lillian (454); Casazza, A. (431); Casazza, Joe C., Jr., Ernest, Roy & Donald (717); Cassinelli, P., Jr. (583); Cauble, Angus & Janet (452); Ceresola, W.J. & J.A. (639, 640, 642); Chafee, A.M. (209); Champion, W.J. & wife Laura Belle (208); Chango, Maurice L. & wife Ruby (247); Chase, Russell (.....); Chism, E.W. (369); John Edward & wife Miriam (369); Christensen, Arthur B. & wife Pearle M. (209); Christensen, Mrs. Daisy (529); Christensen, Laurida (494, 511, 595); Christensen, Pete (358, 359); Clark, Birdie May (209); Clark, Cecil E. & wife Martha K. (454); Clark, F.N. (454); Clark, Jack S. & Marguerite (515); Clarke, Moss M. (368); Claus, Frank & Betty (429); Cleary, John J. & wife Joyce A. (454); Clink, M. (165); Clough-Fulton Co. (400); Cobb. Will (177); Collard, Geo. A. (454); Collier, Ann (63, 173); Compton, Byron C. & wife Sylvia F. (454); Conelly, Leslie J. & wife Carmelita (368); Conley, Lester C. (153); Connoly, Coleman & wife Johanna (249); Consolidated Warehouse Co. (407¾, 408, 307); Cook, Gordon Ellis & Marguerite (498); Cooper, C.F. & N.M. (208½); Corecco, Alma & Math Schmith (434); Corle, Fred & wife Nellie (165); Costa, Manuel E. (118); Couch, B.L. & wife Ellen O. (249); Cozzalio, Frank G. & wife Lydia (215); Crampton, Phillip H. (106, 107); Crawford, E.M. & wife Thelma (431); Cremer Investment Co. (395); Crews, Charles (452); Crowell, Mary (67); Cullen, Ray W. (356); Cuni, Ferdinand (452); Curry,

Gladys A. (454); Curti, Geo. & Julia (319); Curti, Katherine (167).

(DD) Daly, Anna E. (716); Damonte, Bennie (701, 702, 703, 704, 705, 706, 707, 715a); Damonte, Louis (701, 702, 703, 704, 707, 715a, 87); D'Andrea, Venanzio (339); Darby, Mary E. (431); Darrah, Lee & Carrol (196); Davis, Mary W. (182, 213); Davis, Raymond & wife Lois Evans (133); Davis, Russell B. (409); Dawson, Edward B. & wife Lois A. (182); Dean, Graham M. & wife Ruth (179); Del Cima, Amelia (209); DelCurto, A.W. (717, 718, 187); DeLucchi, Marvel (209, 210); DeLucchi, John P. (498); DeLucchi, Leo (.....); Depaoli, A. (491); Depaoli, Angelina (491); Depaoli, V. (123); Depeder, Jos. L. & wife (300, 305); Depoali, Richard & Furie (586); Dianda, E. (407); Dixon, John & Charlotte (498); Dondero, Chas. (62); Donovan, John (191); Doolittle, Theresa (311); Dorsay, P.N. & wife Elva (424); Downing, Uberto S. & wife Hazel E. (455); Drake Mrs. F.A. (408½); Drake, Floy N. (126); Drake, Robert (178½, 257); Dresser, Daniel (.....); Dron, Geo. W. & wife Louise (249); Dron, Louise N. (244); Duberstein, Isadore & wife Clara (206); Duchene, Mrs. P.F. (356); Duelks, Marie L. (454); Duferrena, Grace (244); Dunn, Allen Y. & wife Alice Day Cook (356); Dwyer, Teresa Marketti (424); Douglas, Mantee (454).

(EE) Eaton, Margaret J. (250); Eccles, Forrest (83, 84, 107); Edwards, William G. (107); Edmonson, Hattie B. (177)); Eggy, Otto & Lena (452); Elsen, Theodore & wife Lillian Y. (363); Elges, Louise (64, 316); Ellis, Bessie J. (605, 606, 606a, 607, 607a); Endsley, L.C. & wife Mary (431); Escalle, P. (428, 429); Esden, H.W. (635); Evans, Karl & Isabelle (502); Evans, Leslie (130, 133); Evans, J.N. Inc. (130); Eveland, A. John (64, 173); Everett, T.R. (494).

(FF) F. & A.M. Lodge No. 13 (122); Fairchild M.A. & Edna M. (250); Faretto, Leslie (452); Faretto, Raymond (452); Faretto, Tony (452, 457); Farretto, John C., Antone, Michael, Rose, Charles A. (67); Fairbanks, Boyd & wife Emily (153); Fairbanks, Lee (356, 153); Feretto, E. (509, 517); Ferrari, Eugene M. & wife Lee (244); Ferraris, Joseph & wife Diamond (390); Fuerstein, Wm. (244, 280, 130); Field, John S. (182); Fife, Betty, William, James & Joseph (266, 469); Figone, Antonio (335, 571, 572); First National Bank of Nevada as Trustee (179, 179½, 259); Fisher, Cletus M. (256); Fleming, Charlotte (55, 56); Flick, Margaret B. (514, 601, 602); Flint, Herbert (226); Flyge, Ludwig (431); Folk, Otis B., Campbell, James L. & Crowder, Philip (244); Foote, Harry S. (454); Ford, Frances D. & Robert H. (179),; Ford, Neal K. & wife Ruby (454); Foreson, Alfred E. (200, 233, 322); Fox, Forrest & Margaret (449); Frandsen, Katherine (250); Franklin, Tamara (443); Fraser, Wm. H. (170); Frazer, Ray S. (322); Frey, Leo and Frances A. (178½, 179, 257); Frohlich, A.C. (209); Frost, Demarino (743); Frost, Harry J. & Ethel (68); Frosig, Arthur & wife Mamie (358, 359); Fugit, John Cleveland & wife Mildred (18, 90); Fuller, May Bell & M.K. (175).

(GG) Galvin, Joseph & wife (324, 578); Games, J.R. (64, 173); Garaventa, Luigi (625); Garaventa, Serafino (613, 614); Garbarino, Joe (159); Gardella, Joseph (78, 188); Gardella, Margarita (now Mrs. M. Vipiana (598, 599); Gardella, N. (54, 147); Garson, Sina (46); Gaspari, Caesar, Emilio & Joseph (350, 350a, 354); Gault, Chas. J. (313); Gault, J.H. (310); Gelmsted, Ada A. & husband John (232); General Petroleum Corp. (400); General Service Station (431); George, C.L. (462); Gerow, Mrs. Echo (.....); Getchell, N.H. (177); Ghigerri, Amelia (185, 186, 581);

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(HH) Haddock, F.J. (179); Hallis, John J. & wife Olive L. (271); Hamill, M.H. & wife Grace (177); Hamlin, Clarence S. & wife Alma (244, 153); Hammersmark, Orva (206); Hammond, Gertrude (429, 440); Hancock, Chas. H. & wife Maggie (454); Hancock, Luke B. & wife Hazel H. (454); Hanna, Dale L. (247); Hanna, Edward O. & wife Minerva E. (440); Hanna, Laura (615); Hanser, Anna (125); Hanson, Florence (498); Hanson, Hans (103); Hanson, N.J. (125, 126); Hanson, Walter R. & wife Alta B. (133); Hanson, Walter (125); Hardison, Zelma V. (177); Hardy, Cornelia & husband Telge F. (153); Harper, Harry (454); Harper, Twyman C. (244); Harrington, Earl W. (389); Hartock, Kurt & wife Julia (454); Hastings, L.L. & Marie (136a); Haverland, Chas. H. & wife Bertha S. (434); Hawkins, Leonard (147); Heater, Clair & wife Alice (209, 210); Heidrick, Adelaide (456); Heidtman, H.C. (69, 440);

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(II) Indermuhl, Adolph (521); Indiano, Martin (461); Iratcabal, John (251); Isbell, C.V. & wife Mabel (250); Isbell Construction Co. (450, 451); Isola, Dante & Armide, Nello Ceccarelli & Isola Ceccarelli (452); Izrael, Maurice (247).

(JJ) Jackson, Paul F. (251); John, Alfred (178½); James, Edmund & wife Grace (244); Jensen, Carrie (349); Jensen, Viola E. & husband Christian M. (153); Jewett, W.K. (177); Johnson, B.A. & wife Agnes (717); Johnson, Mabel C. & Kilroy, Helen M. (194); Johnson, Sarah Z.

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(KK) Kahn L. Stanley (179); Kanable, Cholteal (247); Kaupp, Ethel B. (206); Kearns, Mrs. J.J. (64, 173); Kessler, Earl & wife Louise (247); Key, Joseph B. (249); Kibble, Mildred (110); King, Herbert & wife (247); Kimberley, A.K. & wife Elizabeth (179); Kingsley, Thos. (407½); Kirchner, Ed & Henry (300); Kirkpatrick, Francis A. & wife Ruth (244); Klein, Margaret Schuyler (454); Kleppe, E.J., Arthur, Eulah, Elsie, Mrs. Fred, Neva, Patricia (617); Kleppe, Fred Jr. (574-575); Kline, Dudley L. & wife Naomi B. (178½, 205); Klitsch, Miss Anna (368); Kohlepp, H.C. & wife Elva (244); Kopenhaver, B.E. & A.Z. (177); Koskela, Wm. W. (743).

(LL) Laing, W.H. (443); Laiolo, Pete & wife Juanita (459); Laiolo, Esther (459); Lampson, Rhoda A. (248); Landis, Martha W. (206, 179½, 259); Lane, Mildred L. (454); Larson, John (181); Larson, Lester J. (454); Latourette, Mildred Peckham (464); Landers, Arthur E. (243); Laughton, George L. (244); Laurence, C.E. (255); Lavagnino, John & wife (177); Lawton Springs Inc. (103); Leonard, A.C. & wife Florence (454); Lee, Daniel (454); Lee, Ed (454); Lepori, Frank (315); Leggett, Helen (440); Lewis, Jess R. & Helen, C. Joslin (177); Lewis, John V. & wife Rosella (178½, 205); Liddell, Parker (440); Lindley, Monaei (337, 338); Ling, Louis L. (57); Linnecke, Otto A. & wife Beverly V. (250); Lituanio, Andre (476, 479); Lombardi, Louis F. (249); Long, J.C. & wife Roma B. (55); Long. J.R. (.....); Lothrop, Sarah F. (31); Lott, Esther (.....); Lowery, Nellie (244); Loyd, Earl E. & wife Wilma M. (177); Loyd, Elmer (498); Lund, Thor E. (158).

(MM) MacIlravey, Mary E. (345); MacPhee, Carl H. & wife Ethel E. (133); McCafferty, C.A. (431); McCafferty, Edith (431); McCarran, P.A. (Pat) (625½, 626, 626a, 627, 629½); McCloud, E.E. & wife Louise (55); McCray, H.F. (160); McDermott, Ethel (153); McDonald, Elvira (234); McEwen, Clara E. (389); McGinnis, Wm. J. & wife Esther M. (452); McGuigan, Arthur (177); McKay, Zelma R. (445, 454); McKenzie, Hazel A. (48); McKernon, George & wife Helen (178½); McMahon, Willis A. & wife Leona M. (247); McMillen, C.W. & wife Edith (256); McMurdo, William (741); McNair, William (178½, 205; McNeilly, Harold A. (407¾); Machabee, Nola C. & Julia (177); Mack, T.W. (154, 165); Maffi, Joseph (431); Magzen, Mateo (162, 206); Maggiolo, John (459); Manha, Joe (297); Mann, August & daughter Katherine (454); Mansfield, Tom (191); March, Peter J. & wife Susan (357); Margrove, Frank & wife Emma (432); Marks, Peter (54); Marks, Ray (177); Marks, Raymond & wife Thelma (177); Marshall, Harrison & wife Matilda (244); Marti, J.B. & wife Ann K. (179); Martin, Anne H. (154, 165); Martin, D.J. (454); Martin, Joe (.....); Martin, Zack (243); Martinelli, Lawrence (297); Martini, G. (576); Masters, Donald E. & Eleanor (55); Matley, Clifford L. & wife Winona C. (522); Matteoni, Silvio & Narcisco (568, 568a); Maxwell, Agnes J. & Alice H. (516); May, Wilbur D. (74, 707, 718, 728); Mazour, Anatole J. & wife Lucile J. (454); Meginness, Robert V. (454); Meizel, Jeanne & Aubin J. (301, 311); Melilo, Ted A. & wife Helen E. (208); Memmer, Adolph & wife Anne (252); Menente, J.A. (106, 107); Menard, Allen (429); Messick, James B. (244); Metzger, Harry M. & wife Hattie R. (55); Meyer, Clarence J. & wife Merriam L. (244); Meyer, Lotta (449); Miles, Henry H. & wife Bernice (209, 210); Milligan, Wm. & wife Mary Francis (55); Moltzen, Thomas & wife Harriet D. (454); Moltzen, Thomas & Fitch, Leroy A. (179); Mongolo,

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(NN) Nall, Gail L. (209, 210); Nay, Orvis W. & Grace (443); Nelson, Charles & Laura (110); Nelson, Herman V. & wife Jennie (133); Nevada Industrial Loan Corp. (431); Nevada Rock & Sand Co. (400); Newman, Martin & Margaret (498); Nichols, Albert W., Florence M., Marion C. (532, 533, 579, 580, 611); Nicora, Albert (630); Niel, Alice T. (454); Norbeck, Lucy H. (177); Norris, C.B. (431); Novelly, O. & O. Co. (132, 80); Noyes, John H. & wife Wilma M. (244); Nozu, Frank E. (279).

(OO) Oakley, Edith E. (431, 432); O'Connell, T.D. & wife Margaret (179); Oden, R.E. & wife Zoe (431); Oetting, Freda (305); Ohls, C.C. & Albino (209); Olds, Sarah E. (251, 454); Olivia, Fred (293, 294, 295); Olsen, Carl E. (452); O'Rourke, Arthur J. (243); Ortiz, Ralph J. & wife Margaret (133); Otteraaen, Earl & wife Lina (202, 203, 204); Otteraaen, Lena (301); O.Y. Land & Cattle Co. (74, 79, 189).

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(RR) Rae, Roy & wife Neva (718); Raffetto, Joseph L. (342); Raffetto, Louis (615); Raine, J.P. (456); Raine, Robert (427); Ralston, Ethel (177); Ramelli, Caesar & Julius C. (709, 710, 711, 712, 713); Ramelli, Edith & Mona

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(SS) Sandry, Ernest L. (209, 210); Saturno, Joseph & Victor (231, 356); Sauer, George (208½); Sauer, Richard P. & wife Lucille B. (454); Savage, Leonard C. & wife Gertrude (64, 173); Saviers, C.E. & wife Bessie (64, 173);

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(TT) - Tacchino, A. (409); Tait, J.R. & wife Catherine (256); Talbot, W.C. (206); Tolotti, Emil P. & wife Helen M. (249); Tamka, Harold W. (206, 251); Tarner, Ada M. (738); Taylor, T.L. (431); Teglia, Roger (407); Thatcher, Reno (213); The Bee Inc. (574); Thomas, Helen Marye (644); Thomas, Richard F. (153); Thompson, Christie (454); Thompson, Rader (232); Thompson, Walter (244); Thomsen, Mary (215, 216, 217); Threlkel, J.R. (401, 402); Todd, John (431); Tolotti, Albert & Mary (357); Touzen, Claude W. (133); Trosi, Emma Herz (337, 338); Tunison,

Edna Marie (153); Turner, Courtney S. (206); Tyler, Ralph & wife Viola (431).

(UU) United Air Lines (.....); Union Ice Company (271); Union Paving Company (407, 408); Urrutia, Salvador (637).

(VV) Valley Concrete Pipe & Products Co. (Nevada Concrete Pipe Co. (409); VanDover, Harry (558); Vargas, George (395, 408); Voss, E.J. (208); Vhay, David & wife Mary Ellis (179).

(WW) Wagner, D.E. & Helen (178½); Wagoner, Ralph B. & wife Hildeth (452); Walling, Nettie Grace (452); Waltz, Fred C. & Ione V. (454); Walters, Patrick R. & Wife Elizabeth F. (108, 52½); Wanke, Bert R. (743); Warner, Charley (247); Warren, Geo. F. & wife Margaret (177); Washburn, Wesley A. (632); Watkins, Wellesley Walter & wife Eria (152); Webb, Wm. L. & Myrtle (244); Wells, Howard T. & Gertrude M. (620); Wells, R.C. & wife Willafred C. (249); Wells, Wm. & wife Caney (452); Weisenfluh, Louis H. & Clara A. (454); West, Cecil G. & wife Belle (331); Western Lands Inc. (249); Western Pacific Railroad Co. (.....); White Pine Lumber Distrib. Corp. (177, 206, 221); Westover, Pauline (158); White, Theda F. (256); White, Virginia (454); Whitely, Wilson A. (178½, 205); Whittell, George (247); Whitty, R.C. & wife S.E. (719); Wilbur, Leonard & wife (153); Williard, J.H. (431); Williams, F.A. (279); Williams, Paul C. (244, 280, 130); Williams, Tytus & Gladys (382); Willis, Meredith (717); Wills, C.P. & wife Evelyn (717); Willshire Oil Co. Inc. (452); Wilson, Dudley E. & wife Marie (179); Wilson, Mary E. (165½, 168, 646, 646½); Wine, W.H. & Emma (250); Wohlbruck, Harriet S. (452); Wolfersberger, Edward

(208½); Woodward, O. Frank (64, 173); Woody, Mae & Fred (431, 432); Worden, Clarence (203); Wilcox, Maud (452); Wilkins, Lawrence Joe & wife Freda (55); Williams, Elsa & Stuart L. (243); Wright, Claire Gleason & Billie Gail Orton (133); Wright, Irvin C. & wife Pearl (121, 368); Washoe County Water Conservation District.

(YY) Yates, Carrie (179); Yoakum, Dagmar & Emil (208½, 181); Yori, Geo. H. & wife Vera (302); Yori Land & Livestock Co. (302, 387, 404, 502); Yori, Mark Jr. (502); Young, Irvin J. & Georgia M. Young (250).

(ZZ) Zenklusen, Frank (590); Zubieta, Frank (567); Zumoff, Harry & wife Anna B. (209, 210); Kempton, L.A. and Kempton, Genevra (514, 601, 602).

Solicitors for the United States: Ethelbert Ward, John F. Truesdell and Oliver P. Morton, special assistants to the Attorney General, William Woodburn, as former United States Attorney for the District of Nevada; George Springmeyer, United States Attorney for the District of Nevada, and R.G. Withers. Solicitors for numerous defendants are as hereinafter designated.

It is hereby ordered that all persons herein named as owners, grantors and successors be made and considered parties to this action and that all parties herein named as grantees or successors be substituted for their respective predecessors with all the rights of their grantors and respective predecessors.

ERRATA SUPPLEMENT

Page 8, first column, line 45, "the name of which was changed to, and at the date of this Decree is Sierra Pacific Power Company," should be substituted for "succeeded by Truckee River Power Company, incorporated,".

Page 8, second column, 4th line from the end of subdivision (W), the name "Walliam" should be "William."

In all tabulations where the same appears, the "Solicitor" column should be eliminated.

Page 14, claim 50a, the name "Cardella" should be "Gardella."

Page 17, claim 78, the name "Degioranni" in both instances should be "Degiovanni."

Page 29, claim 209, the following description of lands should be inserted in appropriate columns as indicated:

¼	In of	¼	Sec.	T-N	R-E
NW		NW	31	19	20
SE		NW	31	19	20
NE		NW	31	19	20
NW		NE	31	19	20
SW		NE	31	19	20
SE		NE	31	19	20
NE		NE	31	19	20
SW		NW	31	19	20
NW		NW	32	19	20
SW		SW	29	19	20

Page 34, claim 272, the name "Reno Pressed Brick Company" should be "Reno Press Brick Company."

Page 37, claim 335, "283" in "Acre Feet" column should be "382."

Page 39, claim 350a, "388" in "Acre Feet" column should be "361."

Page 47, claim 442, "60" in "Acre Feet" column should be "40".

Page 56, claim 529, the name "Soroni" should be "Sorani."

Page 56, claims 536 and 527, "5.75" in "Sec. Feet" column should be "2.75."

Page 65, claim 617, the name "Keppe" should be "Kleppe."

Page 66, claim 623, the name "Largmarsino" should be "Largomarsino."

Page 71, claim 642, "457" in "Acre Feet" column should be "957."

Page 75, claim 665, the name "Angelina" should be "Angeline."

Page 77, claims 691 and (665), the name "Josie" should be "Rosie" in each instance.

Pages 77 and 80, the column headings designated "In ¼ of ¼," "Sec..," "T-N," and "R-E" and those designated "Approximate Diversion," "Inches," "Sec. Feet," and "Estimated Transit Loss %," should be transposed.

Page 82, claim 720½, the name "Domingo" should be "Domengo."

FINAL DECREE

This cause having been heretofore heard by the Court and, following argument by counsel, the matter having been referred to George F. Talbot, as Special Master, and the said Special Master having thereafter rendered his report and made his findings, and the same having been approved and adopted by the Court (except as disallowed or modified by the Court) by a certain order termed "Temporary Restraining Order" made and entered in said cause under date of February 13, 1926:

NOW, THEREFORE, in accordance therewith, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

That the parties, persons, corporations, intervenors, grantees, successors in interest and assigns and substituted parties above and hereinafter named and their successors in interest and assigns are, and each of them is, as against every other one, hereby adjudged to be the owners of the water rights hereinafter specified and set forth and entitled and allowed to divert and use, from the Truckee River and its tributaries and from the streams, springs, drain and waste waters hereinafter mentioned, and by and through their respective ditches, canals, flumes, dams and reservoirs, for the irrigation of their respective hereinafter described lands, for generating electricity and power, for municipal purposes, for supplying the people living in cities and towns, for reclamation of arid lands, for watering livestock, for domestic uses and other beneficial purposes, water in the respective amounts and subject and according to the respective dates of appropriation and priorities as hereinafter stated, found and allowed.

TRUCKEE RIVER DIVERSIONS

Government rights

INDIAN DITCH

Claim No. 1. By order of the Commissioner of the General Land Office made on December 8, 1859, the lands comprising the Pyramid Lake Indian Reservation were withdrawn from the public domain for use and benefit of the Indians and this withdrawal was confirmed by order of the President on March 23, 1874. Thereby and by implication and by relation as of the date of December 8, 1859, a reasonable amount of the water of the Truckee River, which belonged to the United States under the cession of territory by Mexico in 1848 and which was the only water available for the irrigation of these lands, became reserved for the needs of the Indians on the reservation.

For the irrigation of 3130 acres of Pyramid Lake Indian Reservation bottom lands, plaintiff, the United States of America, is entitled and allowed to divert from the Truckee river through the Indian Ditch, the intake of which is on the left bank of the river in Section 18, T. 22 N., R. 24 E., Mount Diablo Base and Meridian, not exceeding 58.7 cubic feet of water per second to an amount not exceeding 14,742 acre feet of water in any calendar year with a priority of December 8, 1859; provided the amount of water so to be diverted shall not exceed a flow of one miner's inch, or one-fortieth of one cubic foot per second per acre for the aggregate number of acres of this land being irrigated during any calendar year and the amount of water applied to the land after an estimated transportation loss of 15 percent, shall not exceed 85-100 of an inch or 85-100 of one-fortieth of one

cubic foot per second per acre for the total number of acres irrigated, and provided that the amount of water so diverted during any such year shall not exceed 4.71 acre feet per acre for the aggregate number of acres of this land being irrigated during that year, and further provided that the amount of water applied to the land shall not exceed four acre feet per acre for the aggregate number of acres of this land being irrigated during any calendar year.

This water is allowed for the United States and for the Indians belonging on said reservation and for their use and benefit and is not allowed for transfer by the United States to homesteaders, entrymen, settlers or others than the Indians in the event that said lands are released from the reservation or are thrown open to entry or other disposal than assignment or transfer to the Indians.

Claim No. 2. In addition to water for the above mentioned 3130 acres of Pyramid Lake Indian Reservation bottom lands, the Government is hereby and will be allowed to divert water from the Truckee River, with a priority of December 8, 1859, to the amount of one-fortieth of one cubic foot per second per acre for the irrigation of 2745 acres of Pyramid Lake Indian Reservation bench lands. The water so allowed for bench lands may be diverted from the Truckee River through the Truckee Canal or any other ditch now or hereafter constructed as the plaintiff may desire or authorize; provided that the amount of water for bench lands shall not exceed during any calendar year 5.59 acre feet per acre diverted from the river, nor exceed during any calendar year 4.1 acre feet per acre applied to the lands,

for the aggregate number of acres of this land being irrigated during any year.

This water is allowed for the United States and for the Indians belonging on said reservation and for their use and benefit and is not allowed for transfer by the United States to homesteaders, entrymen, settlers or others than the Indians in the event that said lands are released from the reservation or are thrown open to entry or other disposal than assignment or transfer to the Indians.

DERBY DAM AND TRUCKEE CANAL

Claim No. 3. Under the Reclamation Act of June 17, 1902, the United States, acting by the Secretary of the Interior, on July 2, 1902, withdrew from public entry, excepting under the homestead laws in accordance with the provisions of the Act, the lands required for the Government's first reclamation project, now known as the Newlands Project. Thereupon and with due diligence the United States proceeded with the construction of the Derby Dam across the Truckee River in the SW¼ of Section 19, in T. 20, N., R. 23, E., Mount Diablo Base and Meridian, and with the construction of the Truckee Canal, with a carrying capacity of 1,500 cubic feet of water per second, running from this dam a distance of 31 miles to the Lahontan Reservoir on the Carson River, and with the construction of the Lahontan Reservoir, with a storage capacity of 290,000 acre feet, and with the construction of about 250 miles of lateral and sub-lateral irrigation canals sufficient for carrying water for the irrigation of 151,000 acres. On April 30, 1919, the Government had expended for this project $6,252,000.00. the lands so withdrawn for

reclamation are naturally dry and arid and without the application of water are of little or no value, but with irrigation will produce valuable crops and furnish homes with support for a large population.

Subject to prior appropriations and vested rights permitted and confirmed by the Act of Congress of July 26, 1866, the plaintiff is entitled and allowed to divert, with a priority of July 2, 1902, through the Truckee Canal 1,500 cubic feet of water per second flowing in the Truckee River for the irrigation of 232,800 acres of lands on the Newlands Project, for storage in the Lahontan Reservoir, for generating power, for supplying the inhabitants of cities and towns on the project and for domestic and other purposes, and under such control, disposal and regulation as the plaintiff may make or desire, provided that the amount of this water allowed or used for irrigation shall not exceed, after transportation loss and when applied to the land, 3.5 acre feet per acre for the bottom lands, nor 4.5 acre feet per acre for the bench lands under the Newlands Project.

LAKE TAHOE STORAGE

Claim No. 4. Under the Reclamation Act and for irrigation and other beneficial uses on lands under said project and on lands within the basins of the Truckee, Carson and Humboldt rivers in Washoe, Storey, Lyon, Churchill and Humboldt counties, in the State of Nevada, and pursuant to notice posted, by direction and authority of the Secretary of the Interior and for and on behalf of the United States, on the right bank of the Truckee River at the site of the dam in said river near Tahoe City and in Placer County, California, and about 500 feet downstream

from Lake Tahoe, on the 21st day of May, 1903, plaintiff is entitled to, and is allowed with a priority of that date and during all seasons of the year, to have flow into and to hold and store in Lake Tahoe and in a reservoir made of said lake by a dam at said site in said river constructed with the spillway crest thereof six feet above the floors of the flow-ways of said dam as then existing, all waters of or coming into said river or said lake, both surface and under flow, to the extent of 3,000 cubic feet per second and to the extent of the capacity of said lake as a reservoir made by said dam, to said height and subject to the continuous outflow through said river from said lake or reservoir so made by said lake or dam, of such an amount of water as plaintiff may desire to release or may discharge from said lake or reservoir not exceeding at any time a flow of 3,000 cubic feet of water per second.

In addition to the above specified rights, the United States is entitled to store, discharge and control water in Lake Tahoe as provided in the judgment and decree filed and entered on June 4, 1915, in the case of the United States, plaintiff, versus The Truckee River General Electric Company, a corporation defendant, in the District Court of the United States in and for the Northern District of California, Second Division, and subject to said decree the United States shall be entitled to discharge from Lake Tahoe an amount of water sufficient to deliver to the head of the Truckee Canal at the Derby Dam, after transportation loss, 1,500 cubic feet per second. The plaintiff is entitled and allowed at will to release and discharge any of the water stored, or by this decree allowed to be stored, in Lake Tahoe and to flow the same and any other water to which it is entitled, according to its priority, through the Truckee River to the Derby Dam and there divert the

same through the Truckee Canal for irrigation, for storage in the Lahontan Reservoir, for generating power and for other purposes. The rights of said defendant Sierra Pacific Power Company (formerly The Truckee River General Electric Company) under said judgment and decree are hereby recognized and confirmed.

Power Ditches

FARAD PLANT

Claim No. 5. The Sierra Pacific Power Company, a corporation owner, is entitled and allowed to divert at all times from the Truckee River through the Farad Power Flume, which has its intake on the north bank of the Truckee River in the S½ of Lot 6 in the NW¼ of Section 30, Township 18 North, Range Eighteen East, sufficient water, with a priority of the year 1899, to deliver, after transportation loss, to the wheel of the Farad Hydro-Electric power plant, 325 cubic feet of water per second and sufficient additional water with a priority of 1906 to deliver, after transportation loss, to the wheel of said plant, 75 cubic feet of water per second, said plant being situate in the SE¼ of Section 12, Township 18 N. R. 17 E., for the generation of electric power in said plant.

FLEISH PLANT

Claim No. 6 The Sierra Pacific Power Company, a corporation owner, is entitled and allowed to divert at all times from the Truckee River through the Fleish Power Ditch and Flume, which has its intake on the east bank of the Truckee River in the SE¼ of Section 6, Township 18, N. R. 18 E., sufficient water with a priority of February 16, 1904, to deliver, after transportation loss, to the wheel of

the Fleish Hydro-Electric power plant, 327 cubic feet of water per second, said plant being situate in the NE¼ of the SE¼ of Section 30, Township 19 N. R. 18 E., for the generation of electric power in said plant.

VERDI PLANT

Claim No. 7. The Sierra Pacific Power Company, a corporation owner, is entitled and allowed to divert at all times from the Truckee River through the Verdi Power Ditch and Flume, which has its intake on the east bank of the Truckee River in the SE¼ of the SE¼ of Section 19, T. 19 N. R. 18 E. sufficient water, with a priority of October 21, 1909, to deliver, after transportation loss, to the wheel of the Verdi Power Plant 399 cubic feet of water per second, said plant being situate in the SE¼ of Section 8, T. 19 N. R. 18 E. for the generation of electric power in said plant.

In addition to such diversion for power purposes, Sierra Pacific Power Company, a corporation, is allowed to divert from said river through the Verdi Power Ditch 220 inches or 5.50 cubic feet of water per second for supplying the Katz Ditch for irrigation to the extent and with the priority hereinafter allowed to this company, for the Katz Ditch under irrigation rights.

In addition to such diversions for power purposes and for so supplying the Katz Ditch with water for irrigation, Sierra Pacific Power Company, a corporation, is entitled and allowed to divert and transport from the Truckee River, through the Verdi Power Ditch and Flume and to deliver to Verdi Lumber Company, a corporation, and Verdi Lumber Company is entitled to have diverted from

said river through said ditch and flume by, and to receive from the Sierra Pacific Power Company, 100 inches of water with a priority of the year 1894 for supplying and maintaining the log pond of the Verdi Lumber Company in the Town of Verdi, and for logging and saw mill purposes.

WASHOE PLANT

Claim No. 8. The Sierra Pacific Power Company, a corporation owner, is entitled and allowed to divert at all times from the Truckee River through the Washoe Power Ditch and Flume, which has its intake on the south bank of the Truckee River, in the NW¼ of the NE¼ of Section 16, T. 19 N. R. 18 E. sufficient water, with a priority of October 27, 1902, to deliver, after transportation loss, to the wheel of the Washoe Hydro-Electric Power Plant 396 cubic feet of water per second, said plant being situate in the SW¼ of the SW¼ of Section 14, in said township and range, for the generation of electric power in said plant.

Of the water so allowed to be diverted through the Washoe Power Ditch and Flume, Sierra Pacific Power Company is allowed to use during the irrigation season 12.4 inches or .31 cubic feet of water per second, not exceeding a seasonable amount of 50 acre feet for the irrigation of 12.4 acres of its land as hereinafter described and provided under Washoe Power Ditch under irrigation rights.

Also of the amount of water allowed to be diverted through the Washoe Power Ditch, Sierra Pacific Power Company is entitled and allowed to deliver to the defendant Leonidas Frederick Johnson and he is entitled and allowed to have and receive from Sierra Pacific Power Company, 50 inches or 1.25 cubic feet of water per second,

to the seasonal amount of 257 acre feet, for the irrigation of his lands as described and as provided hereinafter under Washoe Power Ditch under irrigation rights.

RENO PLANT

Claim No. 9. The Sierra Pacific Power Company, a corporation owner, is entitled and allowed to divert at all times from the Truckee River through the Reno Power Ditch and Flume, which has its intake on the south bank of the Truckee River 1365 feet north, 35 degrees west from Quarter Section corner between Section 15 and 16, T. 19 N.R. 19 E. sufficient water with a priority of March 31, 1891, to deliver, after transportation loss, to the wheel of the Reno Hydro-Electric Power Plant, 250 cubic feet of water per second, and sufficient additional water with a priority of November 1, 1909 to deliver after transportation loss, to the wheel of said plant 46 cubic feet of water per second, said plant being situate in NE¼ of NE¼ Section 15, in said township and range, for the generation of electric power in said plant.

In addition to such allowed diversions for power purposes through the Reno Power Ditch and Flume, Sierra Pacific Power Company is entitled and allowed to divert from the Truckee River and convey through said ditch and flume and deliver to defendants Sarah McClure, James Murray, William Murray and Sam Murray and their successors, and they are entitled and allowed to have and receive from said company, 50 inches of water for the irrigation of their lands as hereinafter described and provided under Indian Flat Ditch under irrigation rights.

RIVERSIDE MILL DITCH

Claim No. 10. The Riverside Mill Company, incorporated, owner, is entitled and allowed to divert at all times from the Truckee River, through the Riverside Mill Ditch and Flume, which has its intake on the north bank of the Truckee River at a point 84 feet westerly from the center of Chestnut Street in the City of Reno and in the NW¼ of the SE¼ of Section 11, T. 19, N., R. 19, E., 70 cubic feet of water per second with a priority of May, 1863, for operating the Riverside Flour Mill in the City of Reno and for generating power and for milling purposes.

WADSWORTH POWER PLANT

(Solicitor: James T. Boyd)

Claim No. 13. The Wadsworth Light and Power Company, incorporated, owner, is entitled and allowed to divert at all times from the Truckee River, through the Wadsworth Light and Power Company Ditch, which has its intake on the north bank of the Truckee river in the NW¼ of the SW¼ of Section 13, T. 20, N., R. 23, E., Mount Diablo Base and Meridian, 31.3 cubic feet of water per second with a priority of June 26, 1897, for delivering, after an allowed transportation loss of 20 per cent, 25 cubic feet of water per second to the wheel at the pumping and power plant of this company, situated in the SE¼ of the SE¼ of Section 33, in T. 21, N., R. 24, E., M.D.M., for the operation thereof and for pumping and for generating electrical and other power.

WADSWORTH WATER SUPPLY
(Solicitor: James T. Boyd)

Claim No. 14. In addition to the amount of water so allowed to be diverted for generating power, for pumping and the operation of its plant, the Wadsworth Light and Power Company is entitled and allowed to divert at all times from the Truckee River through its said power ditch, for supplying the Town of Wadsworth and the people living in or near this town with water for fire protection, for the irrigation of their lawns, gardens and lands, and for household and other purposes, 3.13 cubic feet of water per second with a priority of June 26, 1897, for the delivery, after an allowed transportation loss of 20 per cent, of 2.5 cubic feet of water per second to the reservoir of said company in the SE¼ of the SE¼ of Section 33, in T. 21, N., R. 24, E., M.D.M., and to said people for said purposes. (See Irrigation Rights for irrigation water allowed under this ditch, No. 635.)

WINTER DITCH REGULATION

The owners and operators of ditches through which the diversion of water is allowed for generating electricity and power and for milling, mechanical and municipal purposes, and for supplying the inhabitants of any city or town, whenever ice shall collect in any of their ditches, shall be allowed to divert from the Truckee River and use such additional amount of water as may be required for flushing out such ice and so long only as may be required for such flushing, provided that the water diverted for such flushing shall not in any case be more than 20 per cent of the amount which is fixed and allowed by this decree to be diverted through the ditch in which said flushing is done.

All water diverted or used for generating electricity or power or for operating mills or power plants shall be returned directly to the Truckee River after being so used. Extra water for preventing congestion by ice and for flushing ice allowed to be used in ditches supplying water for municipal purposes when required must be returned directly to the river when used for these purposes.

IRRIGATION RIGHTS

The parties, persons and corporations hereinafter named and their grantors and predecessors in interest have acquired rights of appropriation in, and have diverted and appropriated from the Truckee River and its tributaries and used for the necessary irrigation of their respective hereinafter described lands, water in the respective amounts and under the respective priorities as stated in the following table. As shown by the following tabulations and columns, each of the parties, persons and corporations named in the columns headed, "Owner," directly or by his, her or its grantor or predecessor in interest, on and continuing after the date in the columns headed "Date of Priority" and opposite his, her or its name or in connection therewith, and through the ditch or ditches named in the columns headed "Ditch" and opposite his, her or its name or described lands, for the necessary irrigation of his, her or its lands as described opposite his, her or its name and in the columns under the words "Acres Irrigated" and following columns, diverted and appropriated water in the amount or amounts stated opposite his, her or its name or described lands and in the columns, headed "Approximate Diversion," and water sufficient to deliver to his, her or its lands after transportation loss, the amounts in flow and acre feet per season stated opposite

his, her or its name or described lands and in the columns under the words "Amount Allowed Delivered to Land":

[Charts Omitted]

HIGHLAND DITCH

1 - Waters for Cities of Reno and Sparks in Addition to Hunter Creek.

Claim No. 98. The head of the Highland Ditch is on the north bank of the Truckee River in SW1/4 of SE1/4 of Section 9 in T. 19 N., R. 18, E., M.D.M. The location notice of the Highland Ditch was filed for record March 30, 1875, and work thereon was commenced not later than July 6, 1875. This ditch was finished and water therefrom used for irrigation and turned in the Highland reservoirs for supplying the town of Reno several years later. In agreements made and recorded in August, 1889, between Highland Ditch and Water Company, predecessors of The Truckee River General Electric Company, and J.N. Evans, predecessor of the J.N. Evans Estate Company, and between Highland Ditch and Water Company and B.G. Clow, predecessor of Grace Clow, it is stated that the right to the first 100 inches of water in this ditch was reserved for service of the system of pipes and works in Reno and that the rights to the next 280 inches of water in this ditch were set over and conveyed in the proportion of 200 inches to J.N. Evans and 80 inches to B.G. Clow, with the same priority for both. (See Claims Nos. 130 and 124)

This agreement also states that subject to any prior rights, the Truckee River General Electric Company is entitled and allowed to divert from the Truckee River, through the Highland Ditch, sufficient water to deliver after transportation loss, through this ditch to the Highland

reservoirs in the east half of the east half of Section 3, in T. 19, N., R. 19, E., M.D.M., 100 inches or 2.5 cubic feet per second of water under an appropriation and priority of date March 30, 1875, for supplying the City of Reno and the people thereof with water for fire protection, irrigation, sanitary, domestic and other purposes.

Subject to prior appropriations and in addition to the amount of water so allowed to be diverted, The Truckee River General Electric Company is entitled and allowed to divert from said river to said ditch an amount of water sufficient to deliver, after transportation loss through said ditch, to said reservoirs 30 inches or .75 of one cubic foot of water per second under a priority of date of January 1, 1900, for so supplying the city of Reno and the people thereof.

For keeping the Highland reservoirs filled with water for fire protection and for supplying the City of Reno and the City of Sparks and the people living in and near these cities with water for irrigation of lawns, household, municipal and other purposes, and subject to prior appropriations and in addition to said amounts of water so allowed to be diverted to said Highland reservoirs under said respective priorities, The Truckee River General Electric Company is entitled and allowed to divert from said river to said ditch an amount of water sufficient to deliver after transportation loss through said ditch, to said reservoirs, 260 inches or 6.50 cubic feet of water per second under a priority of January 1, 1905.

For keeping the Highland reservoirs filled with water for fire protection and for supplying the City of Reno and the City of Sparks and the people living in and near these cities with water for irrigation of lawns, household, municipal and

other purposes, and subject to prior appropriations and in addition to said amounts of water so allowed to be diverted to said Highland reservoirs under said respective priorities, The Truckee River General Electric Company is entitled and allowed to divert from said river to said ditch an amount of water sufficient to deliver, after transportation loss through said ditch, to said reservoirs 180 inches or 4.50 cubic feet of water per second under a priority of January 1, 1919.

For keeping the Highland reservoirs filled with water for fire protection and for supplying the City of Reno and the City of Sparks and the people living in and near these cities with water for irrigation of lawns, household, municipal and other purposes, and subject to prior appropriations and in addition to said amounts of water so allowed to be diverted to said Highland reservoirs under said respective priorities and whenever, as awarded by this decree, the amount of water in Hunter Creek is not sufficient to allow the discharge into the Hunter Creek Reservoir of 9.9 cubic feet of water per second, The Truckee River General Electric Company is entitled and allowed to divert from said river through the Highland Ditch, an amount of water sufficient to deliver to said Highland reservoirs, after transportation loss, a flow of water the equivalent of any such deficiency or the equivalent of the difference between a flow of 9.9 cubic feet of water per second and any lesser amount of water running in Hunter Creek which can be delivered to the Hunter Creek Reservoir as awarded by this decree. The amount of water so allowed to be diverted from the Truckee River through the Highland Ditch to the Highland reservoirs for supplying any such deficiency in the water of Hunter Creek is allowed and is subject to a priority of date of January 1,

1905, for the first 6.50 cubic feet per second thereof and to a priority of date of January 1, 1919, for the remainder thereof.

2 - Irrigation Rights:

Claim No. 99. In addition to the amounts of water so allowed to be diverted for said reservoirs and for uses in connection therewith, The Truckee River General Electric Company is entitled an allowed to divert from the Truckee River through said Highland Ditch, for the following named persons, and their respective successors for the irrigation of their hereinafter described lands, the following respective amounts of water in addition to transportation loss in the transportation thereof, under the following respectively designated priorities:

[Charts Omitted]

BACK DITCH AND JONES WASTE DITCH

The Back Ditch, which has heretofore been called the Frost, Alt and Savage Ditch, the Kiely Ditch and the Kleppe Ditch, was constructed in or about the year 1862, for the purpose of irrigating lands on the Ghigleri ranch, formerly known as the Frost ranch, the Kiely ranch and the Kleppe ranch, and lands on the Alt ranch now owned by defendant Charles W. Mapes, and lands on the Savage ranch, also now owned by the defendant Mapes. The Back Ditch has its head on the southerly bank of the Pioneer Ditch, in SE¼ of NW¼ of Section 17, in T. 19, N., R. 20, E., M.D.M., and thence runs in a southeasterly direction across the lands of the defendant Andrew Ghigleri and across the line between the Ghigleri ranch and the Alt ranch, at which line it crosses on a flume over the Jones

waste ditch and from there runs in an easterly and southerly direction over the lands of the defendant Mapes on the Alt and Savage ranches.

Originally and until changed by the defendant Charles Jones, a narrow swale was used as part of the Back Ditch for carrying the water therein for a distance of more than 800 feet before it reached the dividing line between the Ghigleri and Alt ranches, near said flume, and onto and over lands on the Alt ranch. In the year 1905 the defendant Charles Jones, placed a dam across this swale at a place about 800 feet above and northwesterly from said flume and with permission from M.J. Kiely, predecessor of the defendant Ghigleri, who then owned the land, dug a ditch along the northeasterly bank of said swale from said dam to said flume and from said dam to said flume changed said Back Ditch and the water flowing therein from said swale to said ditch so dug by said Jones. Ever since that ditch was so dug by said Jones it has been and now is, a part of the Back Ditch and as such has changed the water running therein during the irrigating season.

Defendants Charles W. Mapes and Andrew Ghigleri are, and they and their grantors for more than 60 years have been, the owners of the Back Ditch and are, and since its construction have been, the owners of said ditch so constructed by said Jones which was substituted for said swale as a part of said Back Ditch. As such owners the defendants Charles W. Mapes and Andrew Ghigleri are entitled and allowed to convey through the Back Ditch, as so changed by the defendant Jones, and over and across said flume and in said ditch as extended beyond and below said flume, such portions of the water which by this decree they are allowed to divert from the Truckee River through

the Pioneer Ditch as they deem necessary, not exceeding one inch per acre for the irrigation of those parts of their lands above described, which are under and subject to irrigation from the Back Ditch and not exceeding the amount of four acre feet per acre of water per annum.

Subject to, and without interference with the primary right of the defendants Andrew Ghigleri and Charles W. Mapes, to convey water from Pioneer Ditch throughout the Back Ditch for the irrigation of their lands lying thereunder as above provided, the defendants Charles Jones and Jane Jones, as a secondary right are entitled to convey through Back Ditch from the head thereof to said flume and to and through the Jones Waste Ditch and onto their lands above described and for the irrigation thereof, 40 inches of the water which as hereinbefore allowed, they are entitled to divert from the Truckee River through the Pioneer Ditch for the irrigation of their lands provided that they shall not divert from the river at any one time more water than sufficient to allow flows onto their lands aggregating 537 inches nor more than 2300 acre feet per annum for the irrigation of all their lands.

The defendants Charles Jones and Jane Jones are also entitled and allowed to use for the irrigation of their lands the waste waters coming from the Ghigleri ranch and from the lands above into the Jones waste ditch, which runs along the west side of the line between the Ghigleri and Alt ranches from the county road to and under the said flume and which a few rods southerly from said flume, turns and runs in an easterly direction to the lands of defendants Jones, provided that the flows of water used from the Pioneer Ditch and from waste water used by the defendants Charles Jones and Jane Jones for the

irrigation of their lands, shall not exceed in the aggregate 537 inches applied to the lands and that they shall not apply to the land more than 2758 acre feet per annum.

[Charts Omitted]

WASHOE LAKE RESERVOIR AND TRIBUTARIES

Washoe Lake Reservoir and Galena Creek Ditch Company Ditch

Originally the Washoe Lake Reservoir was established by a wooden dam, built across the outlet of Lower Washoe Lake in the year 1863 or 1864. This dam was superseded by a rock-concrete dam constructed in the year 1889. The wasteway or overflow of this concrete dam, as lowered 2 feet in 1890, is the same as the present spillway or overflow of the concrete dam. These dams were constructed in Section 24, over the outlet of Lower Washoe Lake, which outlet bears from the corner common to Section 13, 18, 19 and 24, on the east boundary of Township 17, south 81 degrees west, 59 chains distant, all in T. 17, N., R. 19, E. Mt. Diablo Base and Meridian, in Washoe County and State of Nevada.

The Washoe Lake Reservoir, as so made, comprises Washoe Lake and Lower Washoe Lake, connecting therewith the areas of lands comprising these lakes and the tule or swamp lands adjacent thereto, sufficient to throw back and store the waters in these lakes, upon these areas of lands to the heighth of high water mark of these lakes and to the height and capacity of said dam.

As early as the year 1864 the surplus and unappropriated waters flowing naturally into Washoe Lake and Lower Washoe Lake from the streams arising in the

mountains west and southwest of Washoe Valley and flowing therefrom across this valley and into these lakes, including the streams known as White Rock, Little Valley, Franktown and Ophir creeks, were appropriated and stored in Washoe Lake Reservoir and drawn therefrom during the irrigating seasons and used in the beneficial irrigation of crops growing on the lands of the hereinafter-named stockholders in the Washoe Lake Reservoir and Galena Creek Ditch Company and their predecessors.

In the year 1889 the Washoe Lake reservoir and Galena Creek Ditch Company was incorporated for the purposes of constructing and maintaining a ditch to divert water from Galena Creek, in Washoe County, to Lower Washoe Lake and there storing the water taken into and conveyed by this ditch for irrigation, stock, domestic and mechanical purposes. Thereupon, and with due diligence, the Washoe Lake Reservoir and Galena Creek Ditch Company constructed said concrete dam 2 feet higher than its present height and dimensions and constructed the proposed ditch from the head thereof, at a point on Galena Creek about one-quarter of a mile westerly from the center of Section 9 and across Brown's Creek at a place about one-eighth of a mile northerly from the center of Section 14, all in Township 17, N., R. 19, E., M.D.B. and M., and about seven miles in length, running in a southeasterly direction to the northwest end of Lower Washoe Lake in the northwest quarter of Section 24, in the last-named Township and Range, the lower terminus of said ditch, where it empties the water into the reservoir.

Thereupon, by and through this ditch, the Washoe Lake Reservoir and Galena Creek Ditch Company appropriated and conveyed to the reservoir 114 cubic feet per second of the surplus and unappropriated water of Galena

Creek and a like amount of the unused and unappropriated water of Brown's Creek and is allowed and is entitled, and since and including the year 1889 has been entitled, to so convey through said ditch, 114 cubic feet per second of the hitherto unappropriated waters of Galena Creek and a like amount of the not previously appropriated water of Brown's Creek to said reservoir and there store the same to the extent of keeping the same stored to the height of high water mark of these lakes and to the height and capacity of said dam, for drawing therefrom for irrigation, stock, domestic and mechanical purposes.

By reason of prior appropriation for a beneficial use the Washoe Lake Reservoir and Galena Creek Ditch Company and the hereinafter named stockholders of this corporation, for storage and for the irrigation of their hereinafter designated lands, are allowed and are entitled to have flow into Washoe Lake and Lower Washoe Lake and into said reservoir, sufficient to keep the same filled to the height of high water mark of said lakes and to the height and capacity of said dam, the waters flowing naturally into these lakes and into this reservoir from the streams arising in the mountains west and southwest of Washoe Valley, including the streams known as White Rock, Little Valley, Franktown and Ophir creeks, which had not been appropriated by other persons prior to May 25, 1889.

By reason of prior appropriation by said wooden dam the Washoe Lake Reservoir and Galena Creek Ditch Company and the parties to this action, who are the hereinafter named stockholders of this corporation, are allowed for storage and for the irrigation of their hereinafter described lands, and are entitled to have flow into Washoe Lake and Lower Washoe Lake and into said

reservoir, sufficient to keep the same filled to same capacity as made by wooden dam and to the height of high water mark of said lakes and the height and capacity of said dam, the waters naturally flowing into these lakes and into this reservoir from the streams arising from the mountains west and southwest of Washoe Valley, including White Rock, Little Valley, Franktown and Ophir creeks, which had not been appropriated prior to the year 1864.

Under permit granted by the State Engineer of the State of Nevada, dated June 3, 1913, on an application therefor filed in the State Engineer's office on November 19, 1912, Washoe Lake Reservoir and Galena Creek Ditch Company and its stockholders, hereinafter named, are entitled under priority of last-named date, to draw from Washoe Lake Reservoir after it reaches low water mark, through a ditch constructed for the purpose, 5,000 acre feet of water each year for the irrigation of 3,110 acres of land by this corporation and its stockholders.

The rights in Washoe Lake Reservoir are subject to the agreement between Theo. Winters, party of the first part, and I.H. Ball et al., parties of the second part, dated May 18, 1889, and recorded in the office of the County Recorder, Washoe County, B-275, which provides that all waters in the reservoir may pass through the flood gates and wasteways after the first day of July during each year, but preceding this date each year the second parties shall have the right to the use of all waters above the dam at the lower end of the reservoir and below the dam of the first party, which is above and near the southerly end of Little Washoe Lake.

The stockholders in Washoe Lake Reservoir and Galena Creek Ditch Company are entitled to receive and use, through Steamboat Creek and their various ditches leading therefrom, for the irrigation of their lands and for stock and domestic purposes, the water stored in or discharged from Washoe Lake Reservoir in proportion to the number that they hold respectively of the 200 shares of this corporation, as follows:

[Charts Omitted]

GENERAL PROVISIONS

In the foregoing table and columns pertaining to irrigation water rights the word, "Direct," means that the acreages specified thereunder are irrigated by water hereby allowed to be diverted from the river, creek or stream last named above the acreage; the word, "Drain," means that the acreages thereunder are irrigated by drain or waste water hereby allowed and ordered for the irrigation thereof; the word, "Season," means the time in any calendar year when irrigation may be needed; the word, "Priority," means the time when the water right was initiated. "Inch" means one-fortieth (1/40th) of one cubic foot per second, which, in general is the amount of water which will flow through an orifice having an area of one square inch, under a pressure of six (6) inches at the center of the opening. "Acre Foot," means the amount of water which will cover an area of one acre to a depth of one foot.

All of the above described ditches, lands and sections are in townships north and ranges east, Mount Diablo Base and Meridian. All of the irrigated lands are in the State of Nevada, except a part of the tracts listed under Dog, O'Neil, and Sunrise creeks. All of the ditches, canals and flumes are in the State of Nevada excepting the Farad

and the upper end of the Fleish. Lake Tahoe is partly in Nevada and partly in California and the outlet of the lake to the Truckee River and the dam controlling the storage in the lake are in the State of California.

Without the application of water thereto the above described lands are dry and arid and irrigation is necessary for the production of valuable crops thereon. The respective amounts of water hereinbefore stated to have been appropriated for or used on these lands, are in each instance as specified therefor necessary and sufficient for the reasonable and economical irrigation of crops thereon other than grain, potatoes, corn and beets. These do not need to be irrigated for so many months as alfalfa and pasture. Only two-thirds of the amount of water in acre feet hereinbefore specified or allowed for the irrigation of any of the above described tracts of land is necessary for, or should be or is allowed for the irrigation of grain grown thereon. Only four-fifths of the amount of water in acre feet designated above for the irrigation of said tracts of land is necessary for, or should be or is allowed for, the irrigation of potatoes, corn or beets grown thereon. Young alfalfa needs frequent irrigations for a long season. An additional amount of ten per cent of the quantity of water hereinbefore specified in acre feet for the irrigation of any of the above described lands is necessary for and should be and is allowed for the irrigation thereof during the first year that alfalfa is sown thereon, whether the alfalfa be sown with or without grain.

The amounts of water which the parties to this action have appropriated and used for purposes other than the irrigation as stated above are necessary and sufficient for the uses for which they have been appropriated.

The above named parties who so appropriated water for irrigation have also used and in addition thereto are entitled and allowed to use water for livestock and domestic purposes, but only in such amounts as may be necessary for watering stock and for domestic purposes; provided that the priority in respect of the use of water for livestock and domestic purposes of any person shall be identical with the priority of such party for irrigation.

IT IS FURTHER ORDERED AND DECREED that that certain agreement known as the Truckee River Agreement, dated July 1, 1935, entered into by the United States of America, party of the first part, Truckee-Carson Irrigation District, party of the second part, Washoe County Water Conservation District, party of the third part, Sierra Pacific Power Company, party of the fourth part, and such other users of the waters of the Truckee River as may have or shall become parties to said agreement by signing their names thereto, parties of the fifth part, which agreement provides (among other things) for the upstream storage of the waters of the Truckee River and its tributaries, be and the same is hereby approved, adopted by the Court and made a part of the decree and shall be binding as between the signatory parties to said agreement.

Water for irrigation is allowed to be used at any time, provided that the amount applied to the land during any calendar year shall not exceed the quantity in acre feet allowed to the land.

No owner of person or party entitled to the use of water under this decree shall be allowed to use for irrigation during any calendar month more than twenty-five per

cent of the quantity of direct water in acre feet hereby allowed for the land for the season.

If it shall appear at any time in regard to the actual use and need of water for irrigation that the amount hereinbefore estimated and allowed to be diverted from the river or stream into any ditch or canal is not sufficient after transportation loss to deliver to the land the flow allowed by this decree for application to the land, the allowance or flow as fixed by this decree for application to the land shall control, and there may, and hereby is allowed to be diverted from the stream a larger amount than the amount hereinbefore estimated for diversion from the stream, to the extent necessary to supply to the land, after actual transportation loss, the flow of water allowed by this decree for application to the land. Whether more or less than the amount hereinbefore estimated for diversion from the stream by any ditch, the quantity of water diverted for irrigation shall in every case be only such an amount as will supply to the land, after actual transportation loss, the amount of water allowed by this decree for application to the land and only the quantity needed for the irrigation thereof.

When any other user will thereby be deprived of any part of the water to which he is entitled, no ditch owner or user shall be allowed to divert away from the stream extra water for regulating the flow in any ditch.

The parties, persons, corporations, intervenors, grantees, successors in interest and substituted parties hereinbefore named, and their and each of their servants, agents, attorneys, assigns and all persons claiming by, through or under them and their successors, in or to the water rights or lands herein mentioned or described, are

and each of them is hereby forever enjoined and restrained from asserting or claiming any rights in or to the waters of the Truckee River or its tributaries, or the waters of any of the creeks or streams or other waters hereinbefore mentioned except the rights, specified, determined and allowed by this decree, and each and all of said parties, persons, corporations, intervenors, agents, attorneys, servants, assigns and successors in interest; and all persons claiming by, through or under them, are hereby perpetually restrained and enjoined from diverting, taking or interfering in any way with the waters of the Truckee River or its tributaries or with waters of any of the creeks or streams, or with any of the other waters hereinbefore mentioned, so as to in any manner prevent or interfere with the diversion, use and enjoyment of the waters of any of the other persons or parties as allowed or adjudicated by this decree, having due regard to the relative priorities herein set forth; and each of the said parties and persons and each of their agents, servants, attorneys and employees is hereby enjoined and restrained from ever taking diverting, using or claiming any of the water so decreed, in any manner or at any time so as to in any way interfere with the prior rights of any other persons or parties having prior rights under this decree, as herein set forth, until such persons or parties having prior rights have received for their several uses the waters hereby allowed and adjudged to them.

Except as herein specially provided no diversion of water into any ditch or canal, in this decree mentioned shall be permitted except in such amount as shall be actually, reasonably necessary for the economical and beneficial use for which the right of diversion is determined and established by this decree. The amounts of

water hereinbefore allowed are declared to be sufficient for the uses herein mentioned, and any and all use of water in excess of such decreed amounts is declared to be wasteful, and all wasteful or excessive use of water is hereby prohibited.

In any case where water is obtained from two or more sources, the aggregate amount of the combined waters from such sources which may be used, shall not exceed the amount required for such use as herein determined.

Whenever in this decree words of ownership are used in connection with any irrigated lands, such words shall not adjudicate, determine or affect any property rights therein, and this decree does not and shall not in any way determine the title to or rights in any property whatsoever, other than the rights to the diversion and use of water as herein determined and established. In the cases where, by this decree, water is allowed to be diverted through any ditch by the owner thereof for another party the conditions of any contractual relations existing between them are not hereby determined.

A Water Master shall be appointed by this Court to carry and enforce the provisions of this decree and the instructions and orders of the Court, and if any proper orders, rules or directions of such Water Master, made in accordance with and for the enforcement of this decree, are disobeyed or disregarded he is hereby empowered and authorized to cut off the water from the ditch or canal owners or water users so disobeying or disregarding such proper orders, rules or directions, and the Water Master shall promptly report to the Court his said action in such case and the circumstances connected therewith and leading thereto. Whenever the necessities of the situation

appear to the Court to so require, the Court shall authorize the employment by the Water Master of such person or persons to assist the Water Master as the Court may deem necessary to properly carry out the provisions of this decree and the orders of the Court. The terms of employment, expenses and compensation of said Water Master and his assistants, the payment thereof and the means and methods for securing funds with which to pay the same, shall be fixed by orders which the Court may hereafter from time to time make. The compensation and expenses of the Water Master and his assistants shall be borne by the parties whose rights are adjudicated by this decree in the following manner, to-wit: One-third by the United States, one-third by the Sierra Pacific Power Company, and the remaining one-third by the remaining persons or corporations whose rights are adjudicated by this decree. Any person feeling aggrieved by any action or order of the Water Master may in writing and under oath complain to the Court, after service of a copy of such complaint on the Water Master, and the Court shall promptly review such action or order and make such order as may be proper in the premises.

The owner or owners of each ditch or canal herein authorized to divert water from the Truckee River or any of its tributaries, or from any ditch or canal or other waterway receiving water therefrom, shall, within sixty (60) days after the entry of this decree, or such lesser time as may be fixed by the Water Master, install and thereafter at all times properly maintain in such ditch, canal or other waterway, a reliable, sufficient and easily-operated regulating headgate and locking and measuring devices, to be approved by the Water Master, whereby the water diverted into such ditch, canal or other waterway at any

and all times may be properly regulated and correctly measured.

The stored water of any reservoir, including Lake Tahoe, may be turned into and carried in the channel of any natural stream and mingled with the waters thereof and diverted therefrom for the proper uses of the persons or parties entitled thereto. The Water Master, upon timely notice, shall so regulate the headgates along the streams and do and direct to be done such other things as may be needful to transport such stored water and deliver the same to the person or persons entitled thereto. All persons are hereby prohibited from in any way interfering with any such stored water while the same is being legally carried to the persons or parties entitled thereto.

The quantities of water permissible to be diverted by the owners of the several ditches, through said ditches, on account of the several priorities herein decreed, are decreed subject to the obligations of said owners to divert and use water only at such times as needed and only in such amounts as may be required under a reasonable, economical and beneficial use. Rotation, or the combining and exchanging of the use of water between ditches and among users shall be permitted when necessary in order to obtain reasonable economy in the use of the water of the river or other streams, or in order to give to each ditch or user a more advantageous irrigation head, provided that such rotations shall not injuriously affect any of the rights determined and allowed by this decree. The Water Master may arrange for such rotations and consult with and endeavor to obtain the agreements of the various water users thereto, as the occasion may require and shall promptly report to this Court his action in the premises.

All users of water allowed by this decree a flow of less than one inch per acre for his, her or their respective lands may, with the consent of the Water Master or by his direction to the owners or person in charge of the ditch through which the water is conveyed, use when needed for the irrigation of his, her or their land, a larger flow than specifically allowed by this decree, up to and not exceeding one inch per acre, provided the amount of water used during any calendar year shall not exceed the seasonal acre feet allowance for the land, and that the flow allowed would not, if continuous, deliver in any one month in excess of twenty-five (25) per cent of the seasonal allowance in acre feet heretofore in this decree specifically allowed for said lands.

Whenever any person or party shall not be receiving the amount of water to which he is entitled under this Decree, the Water Master shall, upon request open, close, lock and regulate the necessary headgates, ditches and other works used for the diversion and application of such waters as to apportion the same as herein provided, and for that purpose may enter upon the lands of any and all persons having rights adjudicated by this Decree.

Persons whose rights are adjudicated hereby, their successors or assigns, shall be entitled to change, in the manner provided by law the point of diversion and the place, means, manner or purpose of use of the waters to which they are so entitled or of any part thereof, so far as they may do so without injury to the rights of other persons whose rights are fixed by this decree.

The State of Nevada is not a party to this suit but the rights of the State to water through different ditches which divert from the Truckee River for the State and

numerous parties to this action have been estimated for convenience and purposes of administration.

The several parties to this suit shall pay and bear their own costs.

Said Sierra Pacific Power Company is the identical party and corporation referred to herein and in the "Temporary Restraining Order" made and entered in said cause on February 13, 1926, as the "Truckee River General Electric Company, a corporation", the name of said corporation having been heretofore changed, pursuant to law, from the Truckee River General Electric Company to Sierra Pacific Power Company.

The foregoing adjudications set forth in Claims Numbers 1 to 744, inclusive, of this Decree are based upon conditions existing at or prior to the entry of said Temporary Restraining Order herein on February 13, 1926; and such adjudication shall not be deemed to limit, reestablish, or otherwise affect any rights acquired, created or lost subsequently thereto by conveyance, transfer, abandonment, non-user, contract (including said Truckee River Agreement) or otherwise, but the rights of the United States shall be as herein adjudicated as of the date of this decree save only as the same may be affected by said Truckee River Agreement.

Done in open court this 8th day of September, 1944.

FRANK H. NORCROSS,

District Judge.

APPENDIX 3

RENO, NEVADA
OFFICE OF
CLAUDE DUKE, WATER MASTER
CASE IN EQUITY, NO. A-3
U.S. DISTRICT COURT FOR NEVADA

TRUCKEE RIVER AGREEMENT

Approved as to form by
HAROLD L. ICKES
SECRETARY OF THE INTERIOR
United States of America

June 13, 1935

TRUCKEE RIVER AGREEMENT

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SUPPLEMENTAL RESERVOIR, [illegible] 4) PRIVATELY OWNED STORED WATER referred to in subparagraph (4) of Paragraph (A) of Article III of this Agreement: provided that DIVERTED FLOW shall not include: (1) released PRIVATELY OWNED STORED WATER (other than PRIVATELY OWNED STORED WATER referred to in subparagraph (4) of paragraph (A) of Article III hereof), (2) NATURAL FLOW in excess of FLORISTON RATES at ICELAND GAGE, (3) water diverted for the generation of electrical energy and other power, and/or for the removal of ice as provided in Paragraph (E) of Article III and Paragraph (B) of Article V hereof, which is returned to the Truckee River.

The amount of DIVERTED FLOW at any specified time shall be determined by adding: (1) the amounts of all waters diverted at such time from the Truckee River by conduits having their places of diversion in said River between ICELAND GAGE and Derby Dam (including Truckee Canal) and (2) the amount of water (if any) bypassed at Derby Dam in excess of irrigation requirements below said Derby Dam as provided in the TRUCKEE RIVER FINAL DECREE, and subtracting from the result of such addition the aggregate of: (1) the amount of water diverted at such time for the generation of electrical energy or other power, and/or for the removal of ice as mentioned in Paragraph (E) of Article III and Paragraph

(B) of Article V of this agreement, and which is returned to said River, (2) the NATURAL FLOW at ICELAND GAGE in excess of FLORISTON RATES, (3) the amount of PRIVATELY OWNED STORED WATER (other than PRIVATELY OWNED STORED WATER referred to in subparagraph (4) of Paragraph (a) of Article III hereof) diverted at such time by said conduits. The result shall be the amount of DIVERTED FLOW at such time. For the purpose of the foregoing computations all measurements of water shall be made in cubic feet per second.

(B) FLORISTON RATES means the rate of flow in the Truckee River at the head of the diversion penstock at Floriston, California (but measured at the ICELAND GAGE) consisting of an average flow of 500 cubic feet of water per second each day during the period commencing March 1 and ending September 30 of any YEAR, and an average flow of [illegible]00 cubic feet of water per second each day during the period commencing October 1 and ending the last day of the next following February of any year.

(C) ICELAND GAGE means a measuring device located on the Truckee River between the point of diversion of the penstock at Floriston, California, mentioned in the 1915 DECREE, and the point of confluence of Gray's Creek and the Truckee River, which gage is used to determine the rate of flow of water in the Truckee River at said point.

(D) MUNICIPAL AND DOMESTIC USES of water means the use of water, delivered through the mains of the distribution system of the Power Company, for municipal, domestic, sanitary, fire protection, lawn and residential garden irrigation, industrial and or all other

similar uses, exclusive, however, of use for the irrigation of farm areas.

(E) NATURAL FLOW means all water (including water flow contributing to Lake Tahoe) flowing in the Truckee River and its tributaries, exclusive of:

(1) water artificially impounded in Lake Tahoe, SUPPLEMENTAL RESERVOIR, or elsewhere, and released into said River, or its tributaries, and water diverted from any water shed (other than the Truckee River water shed) and released into said River, or its tributaries; and

(2) That portion of the flow in Hunter Creek actually diverted by the Power Company in accordance with, and for the uses provided in, the TRUCKEE RIVER FINAL DECREE.

Water diverted from the Truckee River and/or its tributaries for irrigation, domestic, municipal and/or livestock watering purposes which, after use, is returned through seepage or otherwise to said River shall, after its return to said River, be deemed part of the NATURAL FLOW thereof; provided, however, that the classification of water diverted for the generation of electrical [illegible]y or other power purposes shall not, after the return of such water to said River, be changed by reason of such diversion.

(F) 1915 DECREE means the judgment and decree entered in the District Court of the United States, in and for the Northern District of California, Second Division, on June 4, 1915, in the cause therein entitled "United States of America, plaintiff, v. The Truckee River General Electric Company (a corporation), defendant", numbered 14861, a copy of which judgment and decree is attached

hereto, marked "Exhibit [illegible] and by reference made a part hereof.

(G) OPERATIVE DATE OF THIS AGREEMENT is the date when all of the Articles of this agreement are effective, as provided in Paragraph (A) of Article XX.

(H) "Person" and "Persons" include individuals, partnerships, associations and/or corporations, both public and private.

(I) PONDAGE means facilities consisting of a reservoir or reservoirs created by a dam or dams and controlling works and other necessary equipment, constructed and installed for the purpose of regulating the flow of the Truckee River at ICELAND GAGE and of storing water of said River and/or its tributaries.

(J) PRIVATELY OWNED STORED WATER means water (not including water impounded in SUPPLEMENTAL RESERVOIR after its release into the Truckee River or its tributaries, or water stored in and/or now contributing to the water of Lake Tahoe, after its release into said River) impounded by any person under such conditions that the right to the use of such water shall be vested in such person, his successors or assigns.

(K) REDUCED FLORISTON RATES means rates of flow of water in the Truckee River, measured at the ICELAND GAGE, effective and in force during the period commencing November 1 and ending the next following March 31 of each YEAR, determined as follows, viz.:

(1) 350 cubic feet per second whenever the elevation of the water surface of Lake Tahoe is below 6226.0 feet above sea level and not below 6225.25 feet above sea level, and

(2) 300 cubic feet per second whenever the water surface elevation of Lake Tahoe is below 6225.25 feet above sea level.

(L) SUPPLEMENTAL RESERVOIR means facilities [illegible] the Little Truckee River consisting of a storage reservoir having a capacity of not less than 40,000 acre feet, for the [illegible] and control of water and the release thereof into the [illegible] Truckee River.

(M) (1) SUPPLEMENTAL STORAGE WATER means the first 25,000 acre feet of water (or, if, a lesser quantity be diverted and stored, then such lesser quantity) diverted and stored in SUPPLEMENTAL RESERVOIR during any year commencing October 1 and ending September 30 next following under the provisions of Paragraph (A) of Article IV of this agreement.

(M) (2) ADDITIONAL SUPPLEMENTAL STORAGE WATER means all water diverted and stored in SUPPLEMENTAL RESERVOIR in excess of SUPPLEMENTAL STORAGE WATER.

(N) TRUCKEE CANAL WATER means that part of the flow of the Truckee River, to the extent of 1500, cubic feet per second, decreed to the United States by the TRUCKEE RIVER FINAL DECREE for diversion into the Truckee Canal.

(O) TRUCKEE RIVER FINAL DECREE means the final decree which by Article X hereof the parties agree may be entered in said cause pending in the District Court of the United States in and for the District of Nevada, entitled "The United States of America, plaintiff, V. Orr Water Ditch Company, et al, defendants, in Equity No. A-3."

(P) YEAR means a period of twelve consecutive months beginning with the date first mentioned in each instance. The word "year" when not capitalized shall refer to the calendar year.

ARTICLE II. Construction, operation and ownership of PONDAGE and SUPPLEMENTAL RESERVOIR.

(A) Construction of PONDAGE.

The Power Company (subject to the terms of this agreement) agrees, at its own expense, after securing all necessary permits required by law, to acquire and/or construct in the channel of the Truckee River or Little Truckee River at a location to be selected by it between ICELAND GAGE and a point near Boca, California, PONDAGE having a storage capacity (computed without freeboard) of not less than 200 acre feet (if PONDAGE be in the channel) of the Truckee River), or of not less than 800 acre feet (if PONDAGE be in the channel of the Little Truckee River), with outlet control works having a discharge of not less than 500 cubic feet per second, for the purpose of storing and conserving water in Lake Tahoe, or other reservoirs, and water flowing in the Truckee River, by regulating the flow of said River when the flow thereof does not exceed FLORISTON RATES, so as to create a rate of flow at ICELAND GAGE which shall be uniform as nearly as practicable.

The Power Company shall, at its own expense, make and prosecute all applications for permits required by law for the acquisition and/or construction of PONDAGE. The Power Company further agrees (subject to the terms of

this agreement), to complete the construction of PONDAGE on or before March 1, 1936.

(B) Construction of SUPPLEMENTAL RESERVOIR.

The Conservation District agrees (subject to the terms of this agreement) that it will by or through an agreement or agreements with the United States, or otherwise, without expense to the Irrigation District or the Power Company, and after securing all permits required by law, cause to be constructed, on or before March 1, 1936, SUPPLEMENTAL RESERVOIR on the Little Truckee River near Boca, California, having a storage capacity of not less than 40,000 acre feet, with outlet control works having a discharge capacity of not less than 500 cubic feet per second under a static head of 30 feet, provided, however, that the Conservation District shall not be provided, however, that the Conservation District shall not be required, in order to construct SUPPLEMENTAL RESERVOIR, to obligate itself to the United States in an amount exceeding One Million Dollars, and if a reservoir with a capacity of 40,000 acre feet or more cannot be constructed for said sum or less, then in that event this agreement shall be null and void, unless otherwise agreed by the Truckee-Carson Irrigation District and the Washoe County Water Conservation District.

The making of an award by the United States of contract for such construction shall be conclusive evidence that SUPPLEMENTAL RESERVOIR can be constructed for such sum within the meaning of this paragraph (B). The Conservation District, shall, at its own expense make and prosecute, or cause to be made and prosecuted, all applications for permits required by law for the acquisition and/or construction of SUPPLEMENTAL RESERVOIR.

Nothing in this Paragraph (B) contained, however, shall operate to exempt any party hereto from the payment of any taxes or assessments lawfully levied or to be levied upon any property of such party, and such taxes and assessments shall not be deemed an expense within the meaning of this paragraph (B).

(C) Operation, Ownership and Maintenance of PONDAGE and SUPPLEMENTAL RESERVOIR.

(1) Operation of PONDAGE and SUPPLEMENTAL RESERVOIR.

From and after the OPERATIVE DATE OF THIS AGREEMENT PONDAGE shall be operated by the Power Company at its own expense for the accomplishment, in so far as practicable, of the purposes for which the same is to be constructed as stated in paragraph (A) of this Article II, subject to the limitations and conditions prescribed in this agreement. At all times during the period commencing April 1 and ending October 31 next following of any YEAR when the flow of the Truckee River at ICELAND GAGE shall not exceed FLORISTON RATES, PONDAGE shall be so operated as to maintain, in so far as practicable, uniform rate of flow in said River at ICELAND GAGE. During the period commencing November 1 and ending March 31 next following of any YEAR the Power Company may so operate PONDAGE as to fluctuate the flow of the Truckee River at ICELAND GAGE and/or at any other point selected by it, to such extent as it may deem desirable in connection with the operation in connection with the operation of its hydro-electric plants.

From and after the OPERATIVE DATE OF THIS AGREEMENT SUPPLEMENTAL RESERVOIR shall be operated by the Conservation District at its own expense,

subject to the limitations and conditions prescribed in this agreement.

The Power Company shall, at its own expense, make all repairs necessary in order to maintain PONDAGE in an efficient operating condition, and, similarly, the conservation District shall, at its own expense, make all repairs necessary in order to maintain SUPPLEMENTAL RESERVOIR in an efficient operating condition.

PONDAGE and SUPPLEMENTAL RESERVOIR shall be subject to the terms of this agreement, not only while owned by the Power Company and the Conservation District (as the case may be), but also while owned by their respective nominees and/or successors in interest.

(2) Ownership of PONDAGE and SUPPLEMENTAL RESERVOIR.

The ownership of PONDAGE shall be vested in the Power Company or other person, firm or corporation nominated or designated by it for that purpose, and no person, firm and/or corporation, other than the Power Company (and/or the person, firm or corporation so nominated or designated by it) shall acquire any ownership therein or claim of title thereto by reason of the execution of this agreement.

The ownership of said SUPPLEMENTAL RESERVOIR shall (unless vested in the United States by reason of the construction of said reservoir by the United States) be vested in the Conservation District or other person, firm or corporation named or designated by it for the purpose, and, unless said ownership is so vested in the United States, no person, firm and/or corporation other than the Conservation District (and/or the person, firm or

corporation so named or designated by it) shall acquire any ownership therein or claim to title thereto by reason of the execution of this agreement.

If PONDAGE and/or SUPPLEMENTAL RESERVOIR shall be acquired and/or owned by any nominee of the Power Company or the Conservation District (as the case may be) the Power Company or the Conservation District (as the case may be) will promptly cause such nominee (if not already a party hereto and bound hereby) to enter into an agreement with the other parties hereto that PONDAGE or SUPPLEMENTAL RESERVOIR (as the case may be) shall be operated under and subject to the terms of this agreement. If such nominee shall fail to promptly enter into such agreement with the other parties hereto, such nomination shall be ineffective for any purpose.

(D) Construction of Regulating Reservoirs.

(1) The Power Company agrees that in the event PONDAGE is acquired or constructed in the channel of the Little Truckee River, in accordance with Paragraph (a) of Article II, it will, at its own expense, after securing all necessary permits required by law, acquire and/or construct in the channel of the Truckee River at a location to be selected by it between Floriston, California and the intake of the Washoe Power Ditch in Nevada, a regulating reservoir having a capacity sufficient to regulate the flow of the Truckee river during any period commencing April 1st and ending October 31st of any YEAR, when the flow of said River does not exceed FLORISTON RATES. The Power Company further agrees to complete the construction of such regulating reservoir on or before March 1, 1936.

(2) From and after the OPERATIVE DATE OF THIS AGREEMENT, the Power Company agrees to operate such regulating reserevoir [sic] at its own expense during the period, commencing April 1st and ending October 31st of any YEAR, so that the daily fluctuations of the flow of said Truckee River at such point will not exceed six (6) per cent of said flow.

(3) The Power Company (subject to the terms of this agreement) shall be entitled also, at its option, to construct other regulating reservoirs at points in the channel of the Truckee River below Floriston, California, in addition to the regulating reservoir in subparagraph (1) of this Paragraph (D) referred to, and to operate all regulating reservoirs referred to in this Paragraph (D) during the period commencing November 1st and ending March 31st of any YEAR for the purpose of fluctuating the flow of the Trucrkee [sic] River in connection with the operation of its power plans.

ARTICLE III. Rates of flow in Truckee River.

(A) Maintenance of FLORISTON RATES AND REDUCED FLORISTON RATES.

(1) Except as otherwise provided in this agreement, all water in Lake Tahoe which is capable of being released into the Truckee River by the operation of the gates at the outlet thereof shall from and after the OPERATIVE DATE OF THIS AGREEMENT be released into said River as and to the extent required to maintain FLORISTON RATES or REDUCED FLORISTON RATES (whichever shall be in force) in accordance with the provisions of this agreement.

(2) Releases of water from Lake Tahoe and/or of water impounded in SUPPLEMENTAL RESERVOIR shall not (unless otherwise mutually agreed by the Conservation District, the Power Company and the Irrigation District) be made at any time at a rate which will cause a flow at ICELAND GAGE in excess of FLORISTON RATES or REDUCED FLORISTON RATES (whichever may then be in force), except as otherwise provided in this agreement.

(3) During the period commencing April 1 and ending October 31 next following of any YEAR FLORISTON RATES shall, at all time when possible, be maintained unless a temporary reduction thereof for part of the current irrigation season shall be mutually agreed to by the Power Company, the Conservation District and the Irrigation District. In the event that such temporary reduction in FLORISTON RATES shall be mutually agreed to by the Power Company, the Conservation District and the Irrigation District, the Power Company shall request the United States, and the Irrigation District, pursuant to the provisions of paragraphs (a) and (b) of Article Fifth of the 1915 DECREE, to reduce such flow in accordance with such agreement.

(4) Whenever FLORISTON RATES or REDUCED FLORISTON RATES, as the case may be, are being maintained in whole or in part by water from lake Tahoe and the Conservation District, the Power Company and/or the Irrigation District shall release into the Truckee River or its tributaries PRIVATELY OWNED STORED WATER for the purpose of maintaining, in whole or in part, FLORISTON RATES or REDUCED FLORISTON RATES (whichever shall be in force), and the Power Company shall, upon request of the party making such release, request the United States and the Irrigation

District, in accordance with the provisions of paragraph (a) and (b) of Article Fifth of the 1915 DECREE, to limit the draft from Lake Tahoe by an amount of water equivalent to the amount of such PRIVATELY OWNED STORED WATER so released, and the Irrigation District shall, after receiving such request from the Power Company, so operate the dam and controlling works at the outlet of said Lake as to reduce the draft from said Lake during the period of such release of PRIVATELY OWNED STORED WATER by an amount equivalent, so far as reasonably practicable, to the amount of such PRIVATELY OWNED STORED WATER so released, or, if it be impossible to reduce the draft from said Lake to the full amount of such PRIVATELY OWNED STORED WATER so released, then by the largest reduction of draft which it is possible to make; provided, however, that such PRIVATELY OWNED STORED WATER so released shall, to the extent of the amount of water by which the draft from Lake Tahoe was so reduced become DIVERTED FLOW.

(5) During the period commencing November 1 and ending March 31 next following of each YEAR (after the OPERATIVE DATE OF THIS AGREEMENT) whenever the water surface elevation of Lake Tahoe shall be higher than 6226.0 feet above sea level, FLORISTON RATES shall be in force and shall be maintained.

(B) Rates of flow at ICELAND GAGE when level of Lake Tahoe is below 6226.0 feet above sea level.

(1) During the period commencing November 1 and ending the next following March 31 of each YEAR after the OPERATIVE DATE OF THIS AGREEMENT, whenever the water surface elevation of Lake Tahoe shall be lower than 6226.0 feet above sea level REDUCED

FLORISTON RATES shall be in force and shall be maintained to the extent possible, subject to the applicable provisions of this agreement.

(2) During the period commencing November 1 and ending March 31 next following of any YEAR after the OPERATIVE DATE OF THIS AGREEMENT when REDUCED FLORISTON RATES are in effect, rates of flow in excess of or less than REDUCED FLORISTON RATES (but not to exceed FLORISTON RATES) may be maintained upon request of the Power Company to the United States and the Irrigation District and/or the Conservation District, who shall, in so far as practicable, make such releases of water from Lake Tahoe and/or of SUPPLEMENTAL STORAGE WATER impounded during the twelve months ending September 30 next preceding such period, and/or ADDITIONAL SUPPLEMENTAL STORAGE WATER released in accordance with the provisions of Paragraph (C) of this Article III, as are required to maintain such requested rates of flow; provided,

(a) That the total of such releases to maintain such requested rates of flow during such periods shall not on any specified date exceed by more than 6,000 acre feet the amount of water which would have been released from such sources between such specified date and the OPERATIVE DATE OF THIS AGREEMENT if the effective rates of flow in said river had been maintained to the extent possible as provided in this agreement;

(b) That the total of such releases to maintain such requested rates of flow during such periods shall not on any specified date be less, by more than 6,000 acre feet, than the amount of

water which would have been released from such sources between such specified date and the OPERATIVE DATE OF THIS AGREEMENT if the effective rates of flow in said River had been maintained to the extent possible as provided in this agreement;

(c) PRIVATELY OWNED STORED WATER may be released by the owner thereof in lieu of releases of water from Lake Tahoe and/or SUPPLEMENTAL RESERVOIR subject to the provisions of subparagraph (4) of Paragraph (A) of this Article III.

(d) All water released from SUPPLEMENTAL RESERVOIR UNDER the provisions of this paragraph (B) shall be subject to the provisions of subparagraph (5) of Paragraph (C) of this Article; and

(e) That the amounts of water released under the provisions of subparagraph (4) of this Paragraph (B) and of Paragraph (E) of this Article III shall not be included in the determination of the amounts of water released, as provided in this Paragraph (B).

(3) All reductions in FLORISTON RATES shall be effected pursuant to paragraph (a) and (b) of Article Fifth of the 1915 DECREE and/or by request of the Power Company to the Conservation District for releases of water from SUPPLEMENTAL RESERVOIR, in the manner following, to wit:

(a) For the purpose of effecting the reductions in FLORISTON RATES as provided in subparagraph (1) and (2) of this paragraph (B), the Power Company shall give notice to the United States and the Irrigation district as provided in paragraphs (a) and (b) of said

Article Fifth of the 1915 DECREE to so operate the dam and controlling works at the outlet of Lake Tahoe as to effect the reduction in flow below FLORISTON RATES required in order to carry out the provisions of this agreement; provided, however, that if the Power Company shall fail after the OPERATIVE DATE OF THIS AGREEMENT to give any notice required by the terms of this agreement, then this agreement shall be deemed for all purposes a notice by the Power Company to the United States and the Irrigation District in accordance with the provisions of said paragraphs (a) and (b) of Article Fifth of the 1915 DECREE to so operate said dam and controlling works as to fulfill the provisions of this agreement; For the purpose of effecting the rates of flow of the Truckee River at ICELAND GAGE as provided in subparagraphs (1) and (2) of this Paragraph (B), the Power Company shall request the Conservation District to release water from SUPPLEMENTAL RESERVOIR (subject to subparagraph (5) of Paragraph (C) of this Article III) at such rates of discharge as the Power Company may desire, limited, however, to an amount necessary to maintain FLORISTON RATES; provided, however, that if the Power Company shall fail, in the opinion of the Conservation District, to give such notice in time to allow the Conservation District to comply with the requirements of subparagraph (4) of Paragraph (C) of this Article III, then the right of the Power Company to make such request shall terminate for such YEAR, and the Conservation District shall, subject to subparagraph (5) of Paragraph (C) of this Article III,

release any SUPPLEMENTAL STORAGE WATER remaining in SUPPLEMENTAL RESERVOIR in accordance with subparagraph (4) of Paragraph (C) of this Article III.

(4) During the period commencing November 1 and ending March 31 next following of any YEAR, when REDUCED FLORISTON RATES are in effect, water from Lake Tahoe and/or SUPPLEMENTAL STORAGE WATER impounded during the twelve months ending September 30 next preceding such period, shall be released by the Irrigation District or the Conservation District (as the case may be) upon request of the Power Company in an amount up to (but not exceeding) 1500 acre feet, for the purpose of maintaining such rates of flow in excess of REDUCED FLORISTON RATES (but not in excess of FLORISTON RATES), as may be requested by the Power Company, provided the following conditions exist simultaneously:

(a) The electrical energy from the hydro-electric and other power plants of the Power Company combined with the electrical energy from other sources which it is then entitled to receive and is available is by reason of partial or complete breakdown, inadequate to meet the full load demand of the Power Company; and

(b) The Power Company is releasing at maximum possible rates of flow water (if any) stored for power purposes which it can and under the terms of this agreement may release for such purposes.

(C) Release of water from Lake Tahoe and of SUPPLEMENTAL STORAGE WATER for purpose of maintaining FLORISTON RATES and REDUCED FLORISTON RATES.

Unless the Conservation District, the Power Company and the Irrigation District agree otherwise, SUPPLEMENTAL STORAGE WATER and water from Lake Tahoe shall be released into the Truckee River to the extent possible or necessary, as follows, viz.:

(1) The Conservation District shall, during the period commencing April 1 and ending October 31 next following of any YEAR, upon request of the Power Company, release SUPPLEMENTAL STORAGE WATER in an amount up to but not exceeding 4000 acre feet during any such period, at such [illegible] and at such rates of FLOW as may be required for the purpose of regulating the flow of the Truckee River by the [illegible] of PONDAGE as provided in Paragraph (C) of Article II of this agreement; provided, however, that if FLORISTON RATES cannot be maintained at any time during such period with other water available for that purpose, then and in such event the said 4000 acre feet or any part thereof shall be used to maintain FLORISTON RATES to the extent possible or necessary.

(2) If the water surface elevation of Lake Tahoe at any time during the period commencing April 1 and ending October 31 next following of any YEAR shall be higher than 6225.5 feet above sea level, then and in that event (subject to the provisions of subparagraph (1) of this Paragraph (e), so long during said period as said elevation shall be higher than 6225.5 feet above sea level, drafts from Lake Tahoe shall be reduced to the maximum extent legally permissable [sic] and SUPPLEMENTAL STORAGE WATER shall be released, to the extent possible, in order to maintain FLORISTON RATES; provided that if such releases shall be insufficient to fully maintain FLORISTON RATES, the Irrigation District shall release

water from Lake Tahoe to the extent required, so far as reasonably practicable, to make up such deficit in FLORISTON RATES: and provided further that 4000 acre feet of SUPPLEMENTAL STORAGE WATER, subject to release under the provisions of this subparagraph (2), shall be retained in SUPPLEMENTAL RESERVOIR for the purpose provided for in subparagraph (1) of this Paragraph (C).

3. If the water surface elevation of Lake Tahoe at any time during the period commencing April 1 and endnig [sic] October 31 next following of any YEAR be 6225.5 feet above sea level, or lower, then and in that event (subject to the provisions of subparagraph (1) of this Paragraph (C), so long during said period as said elevation shall be 6225.5 feet above sea level or lower, water from Lake Tahoe shall be released, to the extent possible, to maintain FLORISTON RATES; provided that if such releases shall be insufficient to fully maintain FLORISTON RATES, the Conservation District shall release SUPPLEMENTAL STORAGE WATER to the amount required and ADDITIONAL SUPPLEMENTAL STORAGE WATER, subject to the provisions of Paragraph (C) of this Article III, to make up such deficit in FLORISTON RATES, or, if it be impossible to fully make up such deficit by such releases, then the Conservation District shall release into the Truckee River the largest amount of such water from SUPPLEMENTAL RESERVOIR which can be released.

(4) During the period commencing October 31 and ending March 1 next following of any YEAR all SUPPLEMENTAL STORAGE WATER impounded prior to the next preceding October 1, which shall remain in SUPPLEMENTAL RESERVOIR on October 31 of such YEAR shall

be released by the Conservation District into the Truckee River for the purpose of maintaining FLORISTON RATES or REDUCED FLORISTON RATES (whichever shall be in force at the time), subject, however, to the provisions of Paragraph (B), subparagraph (5) of Paragraph (C) and Paragraph (E) of this Article III.

SUPPLEMENTAL STORAGE WATER impounded during the period commencing October 1 and ending April 1 next following of any YEAR shall not be released during said period of such YEAR, except at the option of the Conservation District.

(D) Release of 4,000 acre feet of TRUCKEE CANAL WATER for power use.

The Power Company may at any time or times it deems it necessary or advisable so to do, release into the Truckee River during the period commencing October 1 and ending the last day of February next following of any YEAR all or any of the 4,000 acre feet of water referred to in Article VI hereof, notwithstanding such release may cause a flow in said River in excess of FLORISTON RATES or REDUCED FLORISTON RATES (whichever shall be then in force); provided, however, that such releases shall not result in a flow at the intake of the Truckee Canal in excess of the then safe carrying capacity of said Canal.

(E) Release of water for removal of ice.

(1) Whenever during the months of December, January and February of any YEAR there shall be need of an additional flow of water to enable the Power Company to remove ice interfering with the operation of its power plants, or any of them, the Irrigation District shall release

from Lake Tahoe such additional amount of water as shall be requested of the United States and the Irrigation District by the Power Company for that purpose; provided, however, that the Irrigation District shall not be required to release for said purpose more water than sufficient to maintain a flow, available for the generation of power at the Fleish Plant, in excess of the rate of flow then in force at ICELAND GAGE, and in no event shall the flow at ICELAND GAGE exceed 500 cubic feet per second.

(2) The Conservation District shall, upon request of the Power Company, release into the Truckee River, during said months of December, January and February of any YEAR SUPPLEMENTAL STORAGE WATER imponded prior to October 1 next preceding such release, for the purpose of removing ice; provided, however, that the Conservation District in any event shall not be required to release more water than sufficient to maintain a flow, available for the generation of power at the Fleish Plant, in excess of the rate of flow then in force at ICELAND GAGE, and in no event shall the flow at ICELAND GAGE exceed 500 cubic feet per second.

(F) Release of water from Lake Tahoe to prevent High water Damage.

The parties hereto agree that the Irrigation District shall [Illegible] operate the dam and controlling works at the outlet of Lake Tahoe as to prevent in sofar [sic] as practicable, the water surface of said lake from exceeding elevation, 6,229.1 feet above sea level. The procedure for regulating said lake to effect such result shall be as follows:

(1) Estimates of the maximum elevation which the water surface of Lake Tahoe would reach during the

current season shall be made on or about March 1 and April 1 of each year and at such other times as may be agreed upon, by the Irrigation District, Power Company and Conservation District, the estimated rise of the water surface elevation shall be based upon:

(a) The water content of the snow in Lake Tahoe Drainage Basin as determined by a joint snow survey of the Lake Tahoe area, which shall be made by the Irrigation District, Conservation District and Power Company on or about March 1st and April 1st of each year and at such other times as the said parties shall agree upon.

(b) The normal precipitation at Lake Tahoe between the date of such snow survey and the next following July 1st.

(c) The assumption that no water will be withdrawn through the outlet gates of Lake Tahoe after the date of such snow survey and prior to the date of the estimated maximum water surface elevation for the current calendar year.

(d) Existing physical and climactic conditions affecting the run-off into Lake Tahoe.

Provided, any snow survey data applicable and available from other reliable sources mutually satisfactory to the Irrigation District, Power Company and Conservation District, may [illegible] used in lieu of data which would otherwise be secured by [Illegible] said joint surveys. The expense of the joint snow surveys [Illegible] estimates shall be borne equally by the Irrigation District, the Power Company and the Conservation District.

(2) Whenever the estimated maximum water surface elevation of Lake Tahoe for the current calendar year, determined as provided in subparagraph (1) of this paragraph (F), higher than 6230.0 feet above sea level, and notwithstanding actual elevation of said lake at such time, the Irrigation District shall open the outlet gates of said lake and release at maximum rate of flow possible, or at such lesser rate of [illegible] as may be agreed upon by the Irrigation District, Conservation District and Power Company, an amount of water equivalent to the amount which it is estimated would be con[illegible] in said Lake above elevation 6230.0 feet above sea level. Whenever after such equivalent amount of water shall have been released, the actual water surface elevation of said [illegible] shall then be lower than 6228.0 feet above sea level, said [illegible] gates shall (unless otherwise agreed by the Power Company, Irrigation District and Conservation District) be closed by the Irrigation District, excepting only as may be required to maintain rates of flow provided for in this agreement.

(3) Whenever the water surface elevation of Lake Tahoe shall be higher than 6228.0 feet above sea level, the Irrigation District shall release from said Lake the maximum possible discharge therefrom (or such lesser rate of flow as may be agreed upon by the Irrigation District, the Conservation District and the Power Company) unless and until the last previous estimate of the maximum elevation of said water surface, as provided in subparagraph (1) of this paragraph (F), considered in conjunction with subsequent as well as anticipated withdrawals from said lake shall indicate that the maximum anticipated water surface elevation for the current calendar year will not exceed 6229.1 feet above sea level.

(4) The quantity of water which may be released from Lake Tahoe under the conditions specified in subparagraphs (2) and (3) of this paragraph (F) shall not exceed the quantity which the United States is entitled to release from said Lake under the provisions of the 1915 DECREE; provided, however, that in the event it shall be necessary, in order to accomplish the purpose contemplated in subparagraphs (2) and (3) of this paragraph (F), to release a greater quantity than the United States may be entitled to withdraw under said 1915 DECREE, the Power Company and the United States agree that they will thereupon immediately petition the court for a temporary order permitting such additional necessary withdrawal of water from said lake as shall be required to prevent, so far as reasonably practicable, high water damage to property legally entitled to protection from such damage; and the Irrigation District shall so operate the existing facilities as to effect as far as possible, the additional releases permitted or directed in any such court order if and when entered.

(G) Release of ADDITIONAL SUPPLEMENTAL STORAGE WATER.

During the period commencing April 1 and ending September 10 next following of any YEAR, (provided all SUPPLEMENTAL STORAGE WATER shall have been first released), ADDITIONAL SUPPLEMENTAL STORAGE WATER shall be released for the same purposes and under the same conditions specified in this Article III for the release and use of SUPPLEMENTAL STORAGE WATER.

During the period commencing September 11 and ending January 31, next following of any YEAR, (provided all

SUPPLEMENTAL STORAGE WATER impounded prior to October 1 of such year shall have been first released from SUPPLEMENTAL RESERVOIR), all ADDITIONAL SUPPLEMENTAL STORAGE WATER impounded prior to October 1 of such YEAR and remaining therein shall be released from SUPPLEMENTAL RESERVOIR, provided that the amount of water which would otherwise have been released from Lake Tahoe shall be reduced during such period by an amount equal, as nearly as practicable, to the amount of ADDITIONAL SUPPLEMENTAL STORAGE WATER so released during such period.

During the period commencing February 1 and ending March 31 next following of any YEAR, ADDITIONAL SUPPLEMENTAL STORAGE WATER impounded prior to the next preceding October 1 and remaining in SUPPLEMENTAL RESERVOIR may be released from or retained in SUPPLEMENTAL RESERVOIR at the option of the Conservation District. If the Conservation District shall elect to release such water in whole or in part, it will, insofar as may be reasonably practicable, so regulate such releases as to rates and periods of flow as to result in the greatest possible retention of water in Lake Tahoe.

ADDITIONAL SUPPLEMENTAL STORAGE WATER retained in SUPPLEMENTAL RESERVOIR after March 31 of any year shall retain its classification as ADDITIONAL SUPPLEMENTAL STORAGE WATER and only be released under the provision of this Paragraph (G) applicable to reuse of ADDITIONAL SUPPLEMENTAL STORAGE WATER.

ARTICLE IV. Impounding water in SUPPLEMENTAL RESERVOIR

(A) SUPPLEMENTAL STORAGE WATER.

The United States and the Irrigation District agree that the Conservation District shall have the right to impound SUPPLEMENTAL RESERVOIR during the period commencing October 1 and ending September 30 next following each YEAR after the OPERATIVE DATE OF THIS AGREEMENT, 25,000 acre feet of TRUCKEE CANAL WATER, subject, however, to the following conditions!

(1) Said TRUCKEE CANAL WATER shall be impounded under conditions which will not result in the NATURAL FLOW OF the Truckee River at ICELAND GAGE being reduced below FLORISTON RATES of flow, exclusive of releases from Lake Tahoe.

(2) The right to impound TRUCKEE CANAL WATER SUPPLEMENTAL RESERVOIR during any such period shall terminate (except as provided in paragraph (B) of this Article IV) when the amount of SUPPLEMENTAL STORAGE WATER impounded during such period and then in said reservoir, plus the amount of such water released from SUPPLEMENTAL RESERVOIR after March 31 of such period for the purpose of maintaining FLORISTON RATES, equals 25,[illegible] acre feet.

(B) ADDITIONAL SUPPLEMENTAL STORAGE WATER

It is further agreed by the United States, the Irrigation District and the Power Company that the Conservation District shall have the right after the OPERATIVE DATE OF THIS AGREEMENT to impound Truckee

Canal Water in SUPPLEMENTAL RESERVOIR up to the capacity of said reservoir, in addition to any such water impounded under the provisions of paragraph (1) and (2) of Paragraph (A) of this Article; provided that such additional TRUCKEE CANAL WATER may only be impounded when the impounding thereof will not reduce the water available for diversion by the Truckee Canal below the then existing carrying capacity of said Canal (limited, however, to the maximum diversion of 200 cubic feet per second at the intake of said canal).

(C)(1) GENERAL CONDITIONS

The Conservation District agrees that it will use every effort to so operate its SUPPLEMENTAL RESERVOIR as to permit the maximum possible diversion of TRUCKEE CANAL WATER by the Irrigation District in so far as, in the judgment of the Conservation District can be done without detriment to the impounding in SUPPLEMENTAL RESERVOIR of water which the Conservation District is entitled to impound therein under the terms of this agreement, or otherwise.

(2) If, during the period commencing October 1 and ending September 30 of the initial YEAR after the OPERATIVE DATE OF THIS AGREEMENT, (a) the amount of water impounded in SUPPLEMENTAL RESERVOIR exceeds 25,000 acre feet and includes any TRUCKEE CANAL WATER, and (b) a shortage of water for the irrigation of lands under Lahontan Reservoir exists or is imminent during such initial YEAR then such excess water (limited, however, to the amount of TRUCKEE CANAL WATER so impounded as hereinabove provided in this Paragraph (A), shall be released at such time or times

during said initial YEAR and at such rate or rates of flow, as may be requested by the irrigation District.

(3) The Conservation District agrees to operate SUPPLEMENTAL RESERVOIR at all times so as to effect the storage therein of the greatest quantity of water possible under the provisions of this agreement.

ARTICLE V. Diversion by Power Company from Truckee River into Highland Ditch and from Hunter Creek.

(A) Diversion by Power Company from Truckee River for MUNICIPAL AND DOMESTIC USES.

(1) The Power Company shall have the right after the OPERATIVE DATE OF THIS AGREEMENT to divert from DIVERTED FLOW to which the United States, the Irrigation District, the Conservation District and the parties of the fifth part herein are entitled, such quantity of water (after first utilizing therefor all the water allocated to the Power Company for MUNICIPAL AND DOMESTIC USES from the Truckee River and Hunter Creek under the TRUCKEE RIVER FINAL DECREE and the 1915 DECREE) as shall be necessary to supply the requirements for such uses in the City of Reno and the City of Sparks (including the suburbs of said cities and areas contiguous to, or near the same, but outside their respective legal boundaries, which are now or hereinafter may be served by the Power Company with water for such uses); provided, however, that the maximum amount of water which the Power Company shall be entitled to divert from the Truckee River for such uses under the foregoing provisions and the TRUCKEE RIVER FINAL DECREE and the 1915 DECREE shall not exceed

a flow of 40 cubic feet per second measured at the point or points of diversion from the Truckee River. Water for MUNICIPAL AND DOMESTIC USES shall be diverted by the Power Company under the following conditions only, to wit:

(a) All water diverted for MUNICIPAL AND DOMESTIC USES shall be chargeable to the portion of DIVERTED FLOW allocated to the Power Company and the Irrigation District by the provisions of subparagraph (1) of Paragraph (A) of Article VII hereof;

(b) Whenever the quantity of water diverted by the Power Company for MUNICIPAL AND DOMESTIC USES as provided in subdivision (a) of this subparagraph (1) is less than 40 cubic feet per second and is insufficient to fully meet the requirements of the Power Company for such uses, or such water (or any part thereof) is for any reason whatsoever not available for the diversion into the Highland Ditch, then and in either of such events, the Power Company shall be entitled to divert into said Highland Ditch from DIVERTED FLOW allocated to the Parties first mentioned in subparagraph (2) of Paragraph (A) of Article VII hereof a flow of water sufficient to supply such deficiency; and

(c) Whenever the quantity of water needed to meet the requirements of the Power Company for MUNICIPAL AND DOMESTIC USES referred to in this subparagraph (1) cannot be fully supplied from DIVERTED FLOW as provided in subdivisions (a) and (b) of this subparagraph (1), the Power

Company may divert from TRUCKEE CANAL WATER such amount of water as may be required to fully meet its requirements for MUNICIPAL AND DOMESTIC USES up to, but not exceeding 40 cubic feet per second.

(2) The Power Company agrees that after the OPERATIVE DATE OF THIS AGREEMENT that:

(a) Its right, as fixed by the TRUCKEE RIVER FINAL DECREE and this agreement, to divert water into the Highland Ditch for MUNICIPAL AND DOMESTIC USES shall be limited, as to the rights of the parties hereto as defined in the TRUCKEE RIVER FINAL DECREE and/or acquired under the terms of this agreement, to 40 cubic feet per second;

(b) It waives, as to the parties hereto only, any and all rights which it now possesses to divert into the Highland Ditch for MUNICIPAL AND DOMESTIC USES water released from Lake Tahoe into the Truckee River in excess of forty (40) cubic feet per second, subject, however, to the provisions of subparagraph (1) of this Paragraph (A); and

(c) It waives, as to the parties hereto only, any and all rights which it now possesses to use for irrigation water (other than NATURAL FLOW) released into the Truckee River from Lake Tahoe.

The waivers contained in the foregoing subdivisions (a), (b) and (c) of this subparagraph (2) are limited to rights of the Power Company only; and nothing in this subparagraph (2) contained shall be construed as a waiver,

or attempted waiver, by the Power Company of any of the rights of, or dedicated to, any irrigator under the Highland Ditch or of any person other than itself.

(B) Diversion into Highland Ditch to remove Ice.

The Power Company shall have the right to divert from the Truckee river into the Highland Ditch at any time or times during the months of December, January and February of any YEAR after the OPERATIVE DATE OF THIS AGREEMENT, any amount of water in said River, in addition to that hereinabove in this Article V mentioned, which is necessary for the purpose of removing ice from said Highland Ditch (but for no other purpose); provided that in the event of the exercise of such right, the Power Company shall immediately after such use return said water, or a like quantity thereof to said River.

(C) Diversion from Hunter Creek for MUNICIPAL AND DOMESTIC USES.

Notwithstanding anything to the contrary contained in this agreement, the Power Company shall have the right to divert water from Hunter Creek for MUNICIPAL AND DOMESTIC USES in the amounts and with the priorities provided in the TRUCKEE RIVER FINAL DECREE.

ARTICLE VI. 4,000 acre feet of TRUCKEE CANAL WATER for power use.

(A) Storage of 4,000 acre feet of TRUCKEE CANAL WATER by Power Company.

The Power Company shall have the right (to be exercised during the period commencing March 1 and ending August 1 of any YEAR after the OPERATIVE

DATE OF THIS AGREEMENT) to divert TRUCKEE CANAL WATER and store the same in any reservoir or reservoirs in the Truckee River Water Shed above ICELAND GAGE (exclusive of the Lake Tahoe Water Shed), with a priority junior to SUPPLEMENTAL STORAGE WATER, up to but not exceeding 4,000 acre feet (which water shall be in addition to the 40 second feet mentioned in Article V hereof), subject, however, to the following conditions:

(1) Said 4,000 acre feet of water may be diverted and impounded only from NATURAL FLOW in excess of FLORISTON RATES, exclusive of releases from Lake Tahoe;

(2) The diversion and storage of said 4,000 acre feet of water, or any part thereof, may be made only at such time or times and in such manner as not to interfere with the storage of SUPPLEMENTAL STORAGE WATER as provided for in Article IV hereof;

(3) If in any such YEAR the Power Company shall divert and store in any such reservoir or reservoirs, all or any part of said 4,000 acre feet of water, it shall, during the period commencing the 1st day of October next following such diversion and storing, and ending the last day of the next succeeding February, release into the Truckee River the amount of TRUCKEE CANAL WATER remaining in such reservoir or reservoirs, which was so diverted and stored during such YEAR;

(4) No diversion shall be made for the purpose of the initial storage of said 4,000 acre feet of water, or part thereof, in the event that the Irrigation District shall determine that the diversion and storage of said initial 4,000 acre feet, or part thereof,

will be detrimental to its Lahontan Reservoir water supply during the period commencing April 1 and ending October 31 of the YEAR, in which such initial storage is proposed to be made.

(5) The diversion and storage by the Power Company [illegible] said 4,000 acre feet of water or part thereof, in [illegible] YEAR after the diversion and storage of said [illegible] 4,000 acre feet, or part thereof, shall be subject [illegible] the condition that the Power Company may not impound in any year a quantity of TRUCKEE CANAL WATER in excess of the amount of water released during the next preceding YEAR in accordance with subparagraph (3) of this Paragraph (A), excepting only with the permission of the Irrigation District and in conformity with the conditions set forth in this subparagraph (5), and in subparagraph (6) of this Paragraph (A).

(6) If the Power Company shall have impounded in such reservoir or reservoirs PRIVATELY OWNED STORED WATER other than TRUCKEE CANAL WATER and shall have released the same into the Truckee River (for diversion into the Truckee Canal at rates of flow which will not result in a flow at the intake of said Canal in excess of its then safe carrying capacity) during the period commencing October 1 and ending the last day of the next following February of any YEAR, then and in that event the Power Company shall be entitled (without obtaining further permission of the Irrigation District and notwithstanding the provisions of subparagraph (5) of this Paragraph (A) to store during the period commencing March 1 and ending August 1 of the next succeeding YEAR in which such storage shall have been made, an amount of TRUCKEE CANAL

WATER (limited however to 4,000 acre feet) equivalent to the quantity so released; and

(7) The Power Company shall at all times exert its best endeavors to so operate its said reservoir or reservoirs as to permit the maximum possible diversion of TRUCKEE CANAL WATER by the Irrigation District, in so far as in the judgment of the Power Company such operation is practicable, without detriment to the impounding in said reservoir or reservoirs of water which the Power Company is entitled to impound therein under the agreement or otherwise.

(B) Release of 4,000 acre feet of TRUCKEE CANAL WATER.

Any TRUCKEE CANAL WATER diverted from the Truckee River and/or its tributaries after the OPERATIVE DATE OF THIS AGREEMENT and impounded by the Power Company pursuant to Paragraph (A) of this Article VI may (subject to subparagraph (4) of Paragraph (A) of Article III) be released into said River in lieu of drafts from Lake Tahoe and/or SUPPLEMENTAL STORAGE WATER, provided the Irrigation District, and the Power Company shall both consent to such release. In the event that the Irrigation District and the Power Company shall give such consent, the Power Company shall give the United Sates and the Irrigation District such notice relative to the reduction of flow below FLORISTON RATES of flow as may be deemed by it necessary to effect such reduction under the provisions of the 1915 DECREE.

(C) Power Company to obtain no right of Ownership to 4,000 acre feet of TRUCKEE CANAL WATER.

The Power Company shall acquire no right of ownership in or to the said 4,000 acre feet of TRUCKEE CANAL

WATER stored by it pursuant to Paragraph (A) of this Article VI, but the ownership thereof shall remain in the United States, provided, however, that said water shall be subject to the use in Paragraph (A) of this Article VI provided. The right to divert said 4,000 acre feet when released shall accrue only to the Irrigation District and the Power Compasy [sic], and said water when diverted by the Power Company shall be used for the generation of power only.

ARTICLE VII. Allocation of DIVERTED FLOW of Truckee River after OPERATIVE DATE OF THIS AGREEMENT

(A) Allocation.

All of the parties hereto agree that from and after the OPERATIVE DATE OF THIS AGREEMENT the rights to the use at all times of DIVERTED FLOW of the Truckee River shall, for the purposes of this agreement, be allocated:

(1) To the Irrigation District, for use upon the Carson and Truckee Divisions of the Newlands Reclamation Project, and (to the extent provided in subparagraph (1) of Paragraph (A) of Article V of this agreement) to the Power Company, and their respective successors in interest, on the one hand, and

(2) To the Conservation District and to the owners (as defined in the TRUCKEE RIVER FINAL DECREE), and their successors in interest, of rights to use water diverted from the Truckee River for use upon lands entitled to water under the provisions of the TRUCKEE RIVER FINAL DECREE, for irrigation, domestic and

stock watering purposes and located between ICELAND GAGE and Derby Dam (including use upon the additional lands referred to in Article VIII of this agreement), subject, however to the rights of the Power Company for MUNICIPAL AND DOMESTIC USES as provided in subdivision (b) of subparagraph (1) of Paragraph (A) of Article V of this Agreement, on the other hand, in the following manner, to wit: The right to the use of thirty-one (31) per cent of such DIVERTED FLOW is hereby allocated to the persons and for the uses provided in subparagraph (1) of this Paragraph (A), and the rights to the use of the remaining sixty-nine (69) per cent of such DIVERTED FLOW is hereby allocated to the persons and for the uses provided in subparagraph (2) of this Paragraph (A); provided, always, that at any time when the right to use any portion of the sixty-nine (69) per cent of DIVERTED FLOW is not being fully exercised for the uses provided in subparagraph (2) of this paragraph (A), and by reason of such fact there shall exist a flow of water available for diversion at Derby Dam in excess of the amount to which the Irrigation District is entitled at such time under the provisions of the TRUCKEE RIVER FINAL DECREE and/or this agreement, the Irrigation District shall have the right to divert and use such excess for its own purposes.

The Conservation District shall be entitled (subject to subdivision (b) of subparagraph (1) of Paragraph (A) of Article V hereof) to the use of all water included in said sixty-nine (69) per cent of DIVERTED FLOW referred to in subparagraph (2) of Paragraph (A) of this Article, which is in excess of the NATURAL FLOW therein.

The waters flowing in the Truckee River (other than NATURAL FLOW) to which the Conservation District

shall be entitled under the terms of this agreement shall be divided and allocated by it for the benefit of the lands within the Conservation District in the manner provided by law and this agreement.

(B) Priorities.

Whenever, in order to carry out and effect the allocation provided for in Paragraph (A) of this Article VII, it shall be necessary that any limitation be made upon the quantity of [illegible] which any of the parties may divert, such limitation [illegible] be made upon the quantities of water which the parties [illegible] the fifth part may divert and in the order of the priorities [illegible] said parties of the fifth part as such priorities are defined [illegible] the TRUCKEE RIVER FINAL DECREE, and in such case [illegible] quantity of water equal to the amount of such limitation [illegible] accrue and be applied to the uses of the Irrigation District and the Power Company, as provided in subparagraph [illegible] of Paragraph (A) of this Article VII.

ARTICLE VIII. Limitation of area irrigated within the Conservation District.

The parties hereto agree that the additional land upon which any portion of the sixty-nine (69) per cent of DIVERTED FLOW, as provided in subparagraph (2) of ARTICLE VII hereof and/or any PRIVATELY OWNED STORED WATER of the Conservation District, may be used, shall be limited to lands now or hereafter situate wholly within the boundaries of the Conservation District and contiguous to lands possessing rights to the use of water diverted from the Truckee River under the provisions of the TRUCKEE RIVER FINAL DECREE; provided, however,

that the total area of such additional lands shall not exceed five (5) per cent of the total area between ICELAND GAGE and Derby Dam entitled to the use of water of the Truckee River, as such area is defined in the TRUCKEE RIVER FINAL DECREE.

ARTICLE IX. Releases and diversions of PRIVATELY OWNED STORED WATER

Whenever after the OPERATIVE DATE OF THIS AGREEMENT, PRIVATELY OWNED STORED WATER belonging to or controlled by any of the parties hereto shall be released into the Truckee River or its tributaries, an amount of water equal to the amount so released shall be delivered to the point or points of diversion from said River designated by the party making such release as provided in the TRUCKEE RIVER FINAL DECREE; provided, however, that no deductions for transportation losses shall be made.

ARTICLE X. TRUCKEE RIVER FINAL DECREE

The parties hereto hereby consent and agree that after the OPERATIVE DATE OF THIS AGREEMENT a final decree may be entered by the District Court of the United States in and for the District of Nevada in said cause entitled, "United States of America, plaintiff, vs. Orr Water Ditch Company, defendant, In Equity No. A-3," embodying (among other appropriate provisions) the findings relative to the rights of the parties set forth in said Temporary Restraining Order in the Truckee River Adjudication Suit, modified, however, as provided in the stipulation hereinafter in this Article X mentioned. The parties hereto agree, simultaneously with the execution of

this agreement, to execute a stipulation in the form of stipulation annexed hereto, made a part hereof and marked Exhibit A consenting to the entry of such final decree when the conditions of said stipulation have been fulfilled.

When said stipulation shall have been signed as hereinabove provided in this Article X by the United States, the Irrigation District, the conservation District, the Power Company and by the parties of the fifth part herein who, under the provisions of said Temporary Restraining order are entitled to divert water from the Truckee River for the irrigation of lands within the Conservation District, whose diversion rights (computed in acre feet per annum) aggregate not less than seventy (70) per cent of the total diversion rights (similarly computed) within the Conservation District for irrigation from the Truckee River, or their successors in interest, said stipulation, together with two executed copies of this agreement shall forthwith be deposited with First National Bank of Reno, together with escrow instructions in substantially the form of the escrow instructions attached hereto and marked Exhibit B, signed by the parties hereto, or their duly authorized representatives. The parties of the fifth part, and each of them, hereby irrevocably authorize and direct the Conservation District to sign such instructions on their behalf and also to make the request hereinafter in this Article X mentioned for the entry of said final decree in said Truckee River Adjudication Suit.

When the notice, certificates and permits referred to in subparagraphs (1), (2), (3), (4) and (5) of Paragraph (B) of Article XX shall have been executed and issued, said notice, certificates and permits, or certified copies thereof, shall be filed with said Bank, and said Bank shall thereupon

(1) cause one of said duplicate copies of this agreement to be recorded in the office of the Recorder of Washoe County, State of Nevada, and (2) file with the United States District Court for the District of Nevada in said Truckee River Adjudication Suit the remaining executed duplicate copy of this agreement, together with said stipulation; and within thirty (30) days after the filing of said stipulation with said Clerk (or as soon thereafter as the engagements of said United States District Court will permit) the parties shall request said Court to enter a final decree in said Truckee River Adjudication Suit in accordance with said stipulation. When said duplicate executed copy of said agreement shall have been recorded, said copy shall be delivered to the United States, from which a certified copy will be obtained and placed in the custody of some proper person to be designated in writing by the Irrigation District, the Conservation District, and the Power Company, and shall be subject at all reasonable hours to the inspection of any party to this agreement. The custodian so designated may be changed from time to time by a writing signed by the Irrigation District, the Conservation District and the Power Company.

If said Court shall decline to enter final judgment in accordance with said stipulation in the form in which the same shall be so filed, and shall direct that in the entry of said decree any change shall be made in the provisions of said decree affecting the rights of any party to this agreement, then and in that event such change shall be forthwith submitted to the party or parties directly affected thereby, and if such party or parties, together with the United States, the Conservation District, the Irrigation District and the Power Company, shall approve such change, a supplemental stipulation amending said original

stipulation and signed by the United States, the Conservation District, the Irrigation District and the Power Company and by such other party or parties hereto as shall be directly affected by such change, shall be filed with said Court. the entry of a final decree embodying the terms of said original stipulation as modified by said supplemental stipulation shall for all purposes of this agreement have the same effect as herein provided in the case of the entry of a final decree in accordance with said original stipulation. In the event that owing to the absence of any party of the fifth part, or for any other reason, it shall be impracticable, in the judgment of the Conservation District, to give personal notice to any such party of any such proposed change under the provisions of this Article X, the Conservation District may cause to be published, at least once a week for two weeks, in a newspaper of general circulation published in the County of Washoe, State of Nevada, a notice of such proposed change, and such publication shall be deemed for all purposes the equivalent of actual notice to such party.

ARTICLE XI. Rights of the United States to use of water of Truckee River upon Pyramid Lake Indian Reservation Lands

Provision shall be made in the Truckee River final decree, for the rights of the United States to the use of water from the Truckee River for the irrigation of Indian lands within the Pyramid Lake Indian Reservation by inserting in the final decree the following language:

Claim No. 1 By order of the Commissioner of the General Land Office made on December 8, 1859, the lands comprising the Pyramid Lake Indian Reservation were withdrawn from the public domain for use and benefit of

the Indians and this withdrawal was confirmed by order of the President on March 23, 1874. Thereby and by implication and by relation as of the date of December 8, 1859, a reasonable amount of the water of the Truckee River, which belonged to the United States under the cession of territory by Mexico in 1848 and which was the only water available for the irrigation of these lands, became reserved for the needs of the Indians on the reservation.

For the irrigation of 3130 acres of Pyramid Lake Indian Reservation bottom lands, plaintiff, the United States of America, is entitled and allowed to divert from the Truckee River through the Indian Ditch, the intake of which is on the left bank of the river in Section 18, T. 22 N., R. 24 E., Mount Diablo Base and Meridian, not exceeding 58.7 cubic feet of water per second to an amount not exceeding 14,742 acre feet of water in any calendar year with a priority of December 8, 1859; provided the amount of water as to be diverted shall not exceed a flow of one miner's inch, or one-fortieth of one cubic foot per second per acre for the aggregate number of acres of this land being irrigated during any calendar year and the amount of water applied to the land after an estimated transportation loss of 15 percent, shall not exceed 85-100 of an inch or 85-100 of one-fortieth of one cubic foot per second for the total number of acres irrigated, and provided that the amount of water so diverted during any such year shall not exceed 4.71 acre feet per acre for the aggregate number of acres of this land being irrigated during that year, and further provided that the amount of water applied to the land shall not exceed four acre feet per acre for the aggregate number of acres of this land being irrigated during any calendar year.

This water is allowed for the United States and for the Indians belonging on said reservation and for their use and benfit [sic] and is not allowed for transfer by the United States to homesteaders, entrymen, settlers or others than the Indians in the event that said lands are released from the reservation or are thrown open to entry or other disposal than assignment or transfer to the Indians.

Claim No. 2. In addition to water for the above mentioned 3130 acres of Pyramid Lake Indian Reservation bottom lands, the Government is hereby and will be allowed to divert water from the Truckee River, with a priority of December 8, 1859, to the amount of one-fortieth of one cubic foot per second per acre for the irrigation of 2745 acres of Pyramid Lake Indian Reservation bench lands. The water so allowed for bench lands may be diverted from the Truckee River through the Truckee Canal or any other ditch now or hereafter constructed as the plaintiff may desire or authorize; provided that the amount of water for bench lands shall not exceed during any calendar year 5.59 acre feet per acre diverted from the river, nor exceed during any calendar year 4.1 acre feet per acre applied to the lands, for the aggregate number of acres of this land being irrigated during any year.

This water is allowed for the United States and for the Indians belonging on said reservation and for their use and benefit and is not allowed for transfer by the United States to homesteaders, entrymen, settlers or others than the Indians in the event that said lands are released from the reservation or are thrown open to entry or other disposal than assignment or transfer to the Indians.

ARTICLE XII. Withdrawal of protest against granting of Application Nos. 5169 and 6534 filed with California Division of Water Rights

On or before the OPERATIVE DATE OF THIS AGREEMENT the Irrigation District and the Power Company shall withdraw their protests filed with the California Division of Water Rights against the granting of Applications Nos. 5169 and 6534.

ARTICLE XIII. Recognition of right of Irrigation District to enlarge Truckee Canal to a capacity of 1200 cubic feet per second and to increase capacity of Lahontan Reservoir.

The Power Company, Conservation District and the parties of the fifth part, and each of them, waive all objections to the restoration and maintenance of the Truckee Canal by the Irrigation District and/or the United States to a carrying capacity of not exceeding 1200 cubic feet per second. The Power Company, Conservation District, and the parties of the fifth part, and each of them further waive any objection to the increase of the storage capacity of Lahontan Reservoir and agree that such increase of storage capacity thereof may be made by the Irrigation District. Nothing in this Article XIII contained shall operate as a waiver by the Conservation District of any rights it may have under Applications Numbers 5169 and 6534 filed with the California Division of Water Rights.

ARTICLE XIV. Excuses for non-performance and delay in performance.

No party hereto shall be liable for failure to perform, or for delay in performing, any condition or agreement hereinunder, if such failure shall be due to act of [illegible] war, earthquake, failure or refusal of the proper auth [illegible] to issue any permit, certificate, notice, order or document [illegible] issuance of which by law is or shall be a condition precedent to the performance of such condition or agreement, injunctions, court orders, writs, processes or judgments, or other cause or causes beyond the control of such party; and in the event that any such cause shall delay the performance of any condition or agreement (other than those mentioned in Paragraph (a) of Article XX hereof relating to the time within which this agreement shall become operative) which any party shall be obligated to perform, or cause to be performed, under the terms of this agreement, the time of such party to perform the same shall be extended for a period equal to the time during which such cause shall be operative.

ARTICLE XV. 1915 DECREE not to be affected by this agreement.

Nothing contained in this agreement is intended to modify, abrogate, alter or consent to the modification, abrogation or alteration of any of the terms and provisions of the 1915 DECREE; and all of the parties hereto, from and after the OPERATIVE DATE OF THIS AGREEMENT (but not prior thereto), confirm all the rights of the United States and the Power Company as defined and set forth in said DECREE. All of the parties hereto further stipulate and agree that the regulation and use of the waters of the Truckee River and its tributaries (including Lake Tahoe)

in accordance with this agreement shall not be construed as conflicting with any of the provisions of the 1915 DECREE. All of the parties hereto hereby covenant and agree that they will not, nor will any of them, claim or contend in any judicial or other proceeding or otherwise that the regulation or use of the waters of the Truckee River and its tributaries (including Lake Tahoe) as provided in this agreement is or will be inconsistent with or forbidden by any provision of the 1915 DECREE.

ARTICLE XVI. Agreement between United States and Irrigation District dated December 18, 1926, to remain in effect.

As between the United States and the Irrigation District none of the provisions of the contract entered into between the United States and the Irrigation District dated December 18, 1926, shall be deemed to have been in any wise altered, changed, modified or abrogated by the execution of this agreement; provided, however, that the United States and the Irrigation District hereby consent to all changes (if any there be) in the method of regulation and the manner of use of the waters of the Truckee River and its tributaries (including Lake Tahoe) and also to the construction and operation of certain reservoirs, made or provided for in this agreement; and the Irrigation District hereby waives all claims upon the United States on account thereof.

ARTICLE XVII. Provisions of this agreement not to limit or affect rights of Power Company to use of waters of Lake Tahoe and/or Truckee River for generation of electric power.

The parties hereto consent and agree (notwithstanding anything to the contrary contained in this agreement) that at all times after the OPERATIVE DATE OF THIS AGREEMENT the Power Company shall be entitled to use for the development of electric power and in meeting its contractual obligations to supply water to Crown Willamette Paper Company, a Delaware corporation (successor of Floriston Land and Power Company and Floriston Pulp and Paper Company), and its successors, under the contract dated November 2, 1908 between Truckee River General Electric Company, Floriston Land and Power Company and Floriston Pulp and Paper Company and recorded in the office of the County Recorder of the County of Nevada, State of California in Liber 108 of Deeds at page 630, any of the water flowing in the Truckee River (including PRIVATELY OWNED STORED WATER). The Power Company shall also have the exclusive right to divert for said purpose of developing electric power all SUPPLEMENTAL STORAGE WATER at any point or points in the Little Truckee River and/or the Truckee River between SUPPLEMENTAL RESERVOIR and ICELAND GAGE. Nothing contained in this agreement shall constitute a waiver or abandonment of any existing rights of the Power Company to the use of water released from Lake Tahoe and/or of water of the Truckee River for the development of electric power. PROVIDED, ALWAYS, HOWEVER, that water used by the Power Company for the development of electric power and water used by said Crown Willamette Paper Company, or its successors, for

the operation of its said mills and works shall be returned to the Truckee River immediately after such use.

ARTICLE XVIII. Provisions relative to the appointment of Water Administrator and to compilation of data.

(A) Appointment of Water Administrator.

If the Conservation District, the Irrigation District and the Power Company shall at any time hereafter deem it desirable that a Water Administrator be employed for the purpose of assisting in carrying out in the State of California the provisions of this agreement, said three parties, may, by an instrument in writing signed by them, employ such Administrator (who may, but shall not be required to be, the Water Master appointed under the provisions of the TRUCKEE RIVER FINAL DECREE), and shall define his duties, fix his compensation and prescribe the terms and conditions of his employment.

(B) Compilation of data.

The Water Master appointed under the provisions of the TRUCKEE RIVER FINAL DECREE shall be permitted by the parties hereto to have access at all reasonable hours to the records and data kept or acquired by them respectively in connection with their operations under this agreement, in order that said Water Master may compile such data and information as may be necessary or useful in connection with the allocation and distribution of water stored pursuant to the provisions of this agreement and with the flowage in the Truckee River and its tributaries.

ARTICLE XIX.
Method of giving notice or making request.

Any notice, request or permission herein provided to be given or made shall be given or made in writing and shall be either forwarded by United States mail or delivered to the party or parties to or for whom it shall be given or made, and copies or originals of all such notices, requests or permissions shall be promptly mailed or delivered to the United States, the Conservation District, the Irrigation District, the Power Company and the Water Master referred to in Paragraph (B) of Article XVIII, and, if any Water Administrator shall have been appointed pursuant to the provisions of Article XVIII hereof, then also to such Administrator.

ARTICLE XX. Provisions relative to time when and conditions under which agreement becomes operative.

(A) Time when Article I, Paragraphs (A) and (B) and subparagraph (1) of Paragraph (D) of Article II and Article XIV of this agreement become operative.

Upon this agreement and the stipulation for entry of final decree mentioned in Article X hereof being duly executed prior to December 31, 1936 (or if such time be extended in accordance with the provisions of this agreement, then within such extension) by the United States, the Irrigation District, the Conservation District, the Power Company and by parties of the fifth part herein who, under the provisions of the Temporary Restraining Order in said Truckee River Adjudication Suit are entitled to divert water from said River for the irrigation of lands within the Conservation District and whose diversion

rights (computed in acre feet per annum) aggregate not less than seventy (70) per cent of the total diversion rights (similarly computed) within the Conservation District for irrigation from the Truckee River, or by their successors in interest, the provisions of Article I, Paragraphs (A), (B) and sub-paragraph (1) of Paragraph (D) of Article II, Article XII, Article XIII and Article XIV of this agreement, and such provisions only shall immediately be and become effective and in operation.

(B) Time when remaining provisions of this agreement become operative.

This agreement shall become operative as to each and every remaining provisions thereof whether or not it be specifically recited in words or substance that such provisions shall be effective from and after the OPERATIVE DATE OF THIS AGREEMENT, and thereupon shall be and remain operative as to all of its provisions, upon and only upon the following conditions being complied with on or prior to March 1, 1938, (or if such time be extended in accordance with this agreement, then within such extension), to-wit:

(1) The Secretary of the Interior, of the United States shall have issued a certificate or notice stating that SUPPLEMENTAL RESERVOIR is available for the storage of water;

(2) The Department of Public Works of the State of California (or other officer, bureau or commission of the State of California exercising functions similar to those exercised by said Department) shall shall [sic] have issued its final permit approving the construction of the dam of the Conservation District at SUPPLEMENTAL RESERVOIR, if such permit be required by law;

(3) The Department of Public Works of the State of California, or the State Engineer of the State of California, or the State Engineer of the state of Nevada or the Chief Engineer of the Bureau of Reclamation of the United States (or other officer, bureau or commission exercising functions similar to those exercised by said Department or said Engineers, respectively) shall have issued a certificate that SUPPLEMENTAL RESERVOIR has been completed and has the capacity and conforms to the other conditions relating thereto specified in Paragraph (B) of Article II hereof;

(4) The Department of Public Works of the State of California (or other officer, bureau or commission of the State of California exercising functions similar to those exercised by said Department) shall have issued its final permit approving the construction of the dam at the PONDAGE reservoir of Power Company, if such permit be required by law; and

(5) The Department of Public Works of the State of California, or the State Engineer of the State of California, or the State Engineer of the State of Nevada, or the Chief Engineer of the Bureau of Reclamation of the United States (or other officer, bureau or commission exercising functions similar to those exercised by said Department or said Engineers, respectively) shall have issued a certificate that PONDAGE has been completed and conforms to the conditions relating thereto specified in Paragraph (A), and subparagraph (1) of Paragraph (D) of Article II hereof.

The date when all of said remaining provisions shall become effective as hereinabove provided is herein referred to as the OPERATIVE DATE OF THIS AGREEMENT.

The periods of time herein prescribed within which this agreement shall be executed and/or the notice, certificates and/or permits referred to in subparagraphs (1), (2), (3), (4) and (5) of this Paragraph (B) shall be executed and issued may be extended from time to time by a writing signed by the Irrigation District, the Conservation District and the Power Company; and in the event that the Conservation District or the Power Company (as the case may be) is actually engaged in prosecuting with due diligence the work of constructing SUPPLEMENTAL RESERVOIR or PONDAGE (as the case may be), such parties, respectively, shall be entitled of right to extensions of time for the completion thereof, effective so long as said work shall be so prosecuted.

PONDAGE shall be deemed to have been completed within the meaning of this agreement when the certificates and permit referred to in subparagraphs (4) and (5) of this Paragraph (B) shall have been issued.

SUPPLEMENTAL RESERVOIR shall be deemed to have been completed within the meaning of this agreement when the notice, certificates and permits referred to in subparagraphs (1), (2) and (3) of this Paragraph (B) shall have been issued.

If, on or before March 1, 1936 (or if such date be extended, then before the expiration of such extension) the conditions specified in subparagraphs (1), (2), (3), (4) and (5) of Pagagraph [sic] (B) of this Article XX shall not have been fulfilled, either the Irrigation District, the Conservation District or the Power Company (if not in default in the performance of its obligation hereunder) shall be entitled, at its option, to terminate this agreement by giving written notice of such termination to the other parties to this

agreement (exclusive of the parties of the fifth part) and in such case each of the parties hereto (including the parties of the fifth part) shall be restored to his rights and position as the same existed at the date hereof unaffected by any of the provisions of this agreement; provided, however, that nothing herein contained shall constitute or be deemed a waiver by any of the parties hereto of any right such party may have to recover damages from any party who shall have failed, without lawful excuse, to perform this agreement on its part, or to invoke such other remedy in relation thereto as it may deem advisable.

ARTICLE XXI. Provisions of Agreement to apply to and bind heirs, administrators, successors and assigns of parties.

The provisions of this agreement shall be binding upon the parties hereto (including the nominees referred to in Article II hereof), their heirs, administrators, successors and assigns, and whenever in this agreement reference is made to any of the parties hereto or to any such nominee, such reference shall include such party and nominee, his heirs, administrators, successors or assigns, unless the context shall indicate otherwise.

ARTICLE XXII. Obligation of parties to this agreement is several.

The obligation of the parties to this agreement is several, and not joint, and no party hereto shall be liable directly or indirectly for or in respect of any action taken or to be taken hereunder or for any money borrowed or to be borrowed or liability incurred or assumed, or to be incurred or assumed, by any other party hereto (including

any nominee referred to in Article II hereof) for the purpose of carrying out this agreement, or otherwise, but nothing in this Article contained, shall operate to exempt any party hereto from the payment of any taxes or assessments lawfully levied or to be levied on any property of such party.

ARTICLE XXIII. PRIVATELY OWNED STORED WATER.

Except as otherwise expressly provided in this agreement, PRIVATELY OWNED STORED WATER shall not be subject to the terms of this agreement; and wherever the terms "water" and/or "rate of flow" are used herein without words expressly indicating that such terms refer to or arise, either in whole or in part, from PRIVATELY OWNED STORED WATER, such reference shall be deemed not to include or refer to PRIVATELY OWNED STORED WATER.

ARTICLE XXIV. Rights of Non-Signers of Agreement not to be affected hereby.

Nothing herein contained shall be construed to limit the rights of any user of water of the Truckee River who shall not execute this agreement.

ARTICLE XXV. Miscellaneous.

(A) The parties hereto agree diligently and in good faith to cooperate with each other for the purpose of carrying out the provisions of this agreement, and to that end, the Irrigation District shall, so long as it shall be permitted to remain in control thereof, operate the gates and controlling works at the outlet of Lake Tahoe as

herein provided and prescribed, and the Conservation District and the Power Company, respectively, shall operate SUPPLEMENTAL RESERVOIR and PONDAGE in accordance with the provisions hereof, and all of the parties hereto shall in good faith perform all agreements, obligations and covenants herein assumed or agreed to be performed by them respectively.

The Irrigation District, the Conservation District and the Power Company shall each keep adequate records pertaining to their operations under this agreement and, upon request of any of said parties or the Water Master referred to in Paragraph (B) of Article XVIII hereof, such records shall be made available to the party making request therefor.

(B) Nothing contained in this agreement shall preclude any of the parties hereto from acquiring hereafter in the manner provided by law, rights to the use of water in addition to the rights now possessed by them respectively.

Nothing herein contained shall preclude any of the parties hereto from diverting water into the Truckee River Water Shed from another water shed, and the party so diverting the same shall have all of the rights in respect of water so diverted which are or may be provided by law.

(C) The parties hereto agree that in the event the Power Company should desire hereafter to change the place of diversion of water provided to be diverted for MUNICIPAL AND DOMESTIC USES by means of the Highland Ditch, it may make such change in the place of diversion; provided, however, that such changed place of diversion will not create a condition which will be detrimental to any of the rights of the other parties hereto under this agreement.

(D) Wherever the words "flow" or "rate of flow" are used in the agreement and the amount thereof is stated in cubic feet per second, such words shall mean rates of flow during each day equivalent to a constant and uniform flow at the rate stated.

(E) For the purpose of this agreement a depth of one foot in Lake Tahoe shall be assumed to have a capacity of 120,000 acre feet.

(F) For the purpose of this agreement, all elevations herein mentioned shall be determined by reference to that certain bench mark identified in the 1915 DECREE as the top surface of a hexagonal brass bolt ⅞" in diameter projecting 1" from the vertical face of the left hand or Southerly concrete abutment wall of the present existing Lake Tahoe dam, at approximately 3.2 feet below the top thereof and approximately in line, both horizontally and vertically, with the up-stream ends or "cutwaters" of the concrete piers between the sluiceways of said dam, which said bench mark shall be conclusively presumed to be 6230.00 feet above sea level.

(G) From and after the OPERATIVE DATE OF THIS AGREEMENT, all of the parties hereto agree as follows: (1) That the natural conditions obtaining on said date in the bed and banks of Lake Tahoe and of the Truckee River at and in the vicinity of the outlet of Lake Tahoe, above the dam that is at or near the point where said Lake empties into the Truckee River near Tahoe City, Placer County, California, shall not be disturbed or altered by any of the parties hereto without the approval of the Attorney General of the State of California; provided, however, that in the event that said conditions existing on said date shall alter or change for any cause or reason, then the

parties hereto respectively shall have the right to restore said conditions; (2) that they will not create nor cause to be created any outlet of said Lake in addition to the present natural outlet thereof; and (3) that they will not remove water from Lake Tahoe for Irrigation or power uses by any means other than gravity, except upon the condition that the Secretary of the Interior of the United States shall have first declared the same a necessity, and that they will not remove water from Lake Tahoe for sanitary or domestic uses by any means other than gravity, except upon condition that the Department of Health of the States of Nevada and California, or other officers exercising similar authority, shall first have made and filed with the Attorney General of the State of Nevada and the Attorney General State of California certificates showing that a necessity for the same exists.

ARTICLE XXVI. Execution of agreement in counterparts, etc.

This agreement and/or the stipulation referred to in Article I hereof may be executed in any number of counterparts, each of which shall for all purposes be decreed to be the original; and such counterparts singly or together shall constitute one and the same instrument. The Conservation District, the Irrigation District and the Power Company shall be entitled to affix to any duplicate executed copy or copies of said agreement the signature affixed to such counterparts, in order to facilitate the recordation thereof.

Any user of the waters of the Truckee River and/or its tributaries within the Conservation District, who shall not have become a party to this agreement by signing his

name hereto prior to the OPERATIVE DATE OF THIS AGREEMENT, may nevertheless become a party hereto and be entitled to the benefits hereof by thereafter signing this agreement provided the Conservation District shall consent thereto.

ARTICLE XXVII. Irrigation District contract authorized by election and confirmed by Court.

The execution of this contract shall be authorized by the qualified electors of the Irrigation District and Conservation District at elections held for that purpose. Thereafter without delay the two districts shall prosecute to decree proceedings in court for a judicial confirmation of the authorization of this contract. The United States shall not be bound in any way to proceed under the terms of this contract unless and until confirmatory final judgments of such proceeding shall have been rendered, including a final decision in any appeal presented therefrom. The two districts shall without delay furnish the United States for its files certified copies of all proceedings relating to the elections upon this contract and the confirmation proceedings in connection therewith.

ARTICLE XXVIII. Member of Congress Clause.

No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom. Nothing herein contained shall be construed to extend to this contract if made with a corporation for its general benefit.

IN WITNESS WHEREOF; the parties hereto have executed this agreement, the day and year first above written.

UNITED STATES OF AMERICA,

By .....

Party of the First Part.

TRUCKEE-CARSON IRRIGATION DISTRICT,

By .....

By .....

Party of the Second Part.

WASHOE COUNTY WATER CONSERVATION DISTRICT,

By .....

By .....

Party of the Third Part.

SIERRA PACIFIC POWER COMPANY,

By .....

By .....

Party of the Fourth Part.

Owner	Water Right Area
_____	_____
_____	_____

EXHIBIT A.

IN THE DISTRICT COURT OF THE UNITED STATES
IN AND FOR THE DISTRICT OF NEVADA

THE UNITED STATES OF AMERICA, Plaintiff, vs. ORR WATER DITCH COMPANY, et al., Defendants.	IN EQUITY, DOCKET NO. A3

STIPULATIONS FOR ENTRY OF FINAL DECREE

WHEREAS the above entitled Court, after a full hearing of the parties, heretofore made and caused to be entered herein a temporary restraining order dated February 13, 1926, defining the rights of the parties to said cause in and to the waters of the Truckee River and restraining said parties from diverting or using water of said River except as therein provided, which order is now in force and is hereby referred to and made a part hereof;

AND WHEREAS, for the purpose of conserving the waters of Lake Tahoe and the Truckee River and its tributaries and for other purposes, the United States of America, Truckee-Carson Irrigation District, Washoe County Water Conservation District, Sierra Pacific Power Company and various other users of the waters of the Truckee River have entered into, or are about to enter into, an agreement (hereinafter referred to as the "Truckee River Agreement"), a copy of which agreement is annexed hereto and made a part hereof;

AND WHEREAS said Truckee River Agreement provides that a final decree shall be entered herein as provided in this stipulation, –

NOW, THEREFORE, in consideration of the execution of this stipulation by the undersigned, and of the mutual promises of the parties herein contained, IT IS HEREBY STIPULATED by and between the undersigned parties to said cause as follows:

1. That a final decree in substantially the form of the form of final decree annexed hereto and marked "Exhibit 1" and made a part hereof, may be entered herein.

2. That if said Court shall decline to enter final judgment herein in the form of the decree attached hereto and marked "Exhibit 1", and shall direct that in the entry of said decree any change shall be made in the provisions of said decree directly affecting the rights of any signer of this stipulation, then and in that event such change shall be forthwith submitted to the party or parties directly affected thereby, and if such party or parties, together with the United States of America, the Truckee-Carson Irrigation District, the Washoe County Water Conservation District and the Sierra Pacific Power Company shall approve such change a supplemental stipulation amending said original stipulation and signed by the United States, the Truckee-Carson Irrigation District, the Washoe County Water Conservation District and the Sierra Pacific Power Company and by such other party or parties hereto who shall be directly affected by such change shall be filed with said Court.

3. In view of the fact that this stipulation is the basis of other action being taken by certain of the parties to said Truckee River Agreement as therein provided, It is understood and agreed that no signer of this stipulation shall withdraw his signature thereto, and the execution of this stipulation shall be irrevocable.

4. This stipulation shall not be effective for any purpose unless and until the same shall have been filed in said Court as provided in said Truckee River Agreement, but upon being so filed the same shall be effective in accordance with its terms.

Dated: _____, 1935.

Name of Party	Attorney for Party
_____	_____
_____	_____

EXHIBIT B

_____, 1935.

First National Bank in Reno,
Reno, Nevada.

Dear Sirs:

The undersigned hand you herewith:

(A) Stipulation for the entry of a final decree in the cause pending in the United States District Court for the District of Nevada entitled "The United States of America, plaintiff, v. Orr Water Ditch Company, et al, defendants", and numbered, In Equity No. A-3 in the records of said Court (which cause is herein referred to as the "Truckee River Adjudication Suit");

(B) Two duplicate executed copies of agreement dated _____, 1935, between United States of America, party of the first part, Truckee-Carson Irrigation District, party of the second part, Washoe County Water Conservation District, party of the third part, Sierra Pacific Power Company, party of the fourth part, and certain other users of the waters of the Truckee

River and/or its tributaries, parties of the fifth part (said agreement being hereinafter referred to as the "Truckee River Agreement").

You are hereby instructed as follows:

1. To retain in your possession said stipulation and duplicate agreements until the following additional documents, or certified copies thereof, shall have been filed with you (provided that the same shall be filed with you on or prior to March 1, 1936 or within any extension of said date), to-wit:

(a) Notice or certificate of the Secretary of the Interior of the United States stating that SUPPLEMENTAL RESERVOIR described in Paragraph (B) of Article II of said Truckee River Agreement is available for the storage of water;

(b) Final permit of the Department of Public Works of the State of California (or other office, bureau or commission of said State exercising functions similar to those exercised by said Department) approving the construction of the dam of the Conservation District at said SUPPLEMENTAL RESERVOIR (if such permit be required by law);

(c) Certificate of the Department of Public Works, or the State Engineer of the State California, or the State Engineer of the State of Nevada, or of the Chief Engineer of the Bureau of Reclamation of the United States (or other officer, bureau, or commission exercising functions similar to those exercised by said Department or said Engineers respectively) showing that said SUPPLEMENTAL RESERVOIR has been completed and has the capacity and conforms to the other conditions relating

thereto specified by Paragraph (B) of Article II of said Truckee River Agreement;

(d) Final Permit of the Department of Public Works of the State of California (or other officer, bureau, or commission of said state exercising functions similar to those exercised by said Department) approving the construction of the dam at the PONDAGE reservoir of the Power Company described in Paragraph (A) of Article II of said Truckee River Agreement (if such permit be required by law); and

(e) Certificate of the Department of Public Works or the State Engineer of the State of California, or the State Engineer of the State of Nevada, or the Chief Engineer of the Bureau of Reclamation of the United States (or other officer, bureau or commission exercising functions similar to those exercised by said department or said Engineers, respectively) showing that PONDAGE has been completed in accordance with the conditions relating thereto specified in Paragraph (A) of Article II of said Truckee River Agreement.

2. If and when all of said documents specified in paragraph (1) hereof have been filed with you prior to March 1, 1936 (or such later date to which the time for filing the case may be extended) you shall:

(a) deliver one duplicate executed copy of said Truckee River Agreement to the County Recorder of the County of Washoe, State of Nevada, for recordation, and

(b) deliver to and file with the Clerk of the United States District Court for the District of Nevada in said Truckee River Adjudication Suit the remaining executed copy of said Truckee River Agreement, together

with said stipulation and said documents referred to in subparagraph (a), (b), (c), (d) and (e) hereof.

3. If said documents referred to in said subparagraphs (a), (b), (c), (d) and (e) of Paragraph 1 hereof shall [illegible] be filed with you within the time hereinabove specified [illegible] any extension thereof), you shall promptly return to the undersigned Truckee-Carson Irrigation District, Washoe County Water Conservation District and Sierra Pacific Power Company all of the documents hereinabove referred to [illegible]ceipt for said papers signed by the attorneys for said Truckee-Carson Irrigation District, Washoe County Water Conservation District and Sierra Pacific Power Company shall constitute a sufficient acquittance to you therefor.

You may accept a written opinion signed by the attorney for Washoe County Water Conservation District, Truckee-Carson Irrigation District and Sierra Pacific Power Company as conclusive evidence that the time for the filing with you of any of said documents referred to in said subparagraphs (a), (b), (c), (d) and (e) has or has not been extended and if so, as to the date to which the same has been extended and also as to whether or not any of said notices, permits andcertificates referred to in subparagraphs (b) and (d) as required by law, and also as to whether any of the [illegible]ing notices, permits and certificates, are, or are not, in due form and properly executed, or as to any other matter arising under these escrow instructions.

Yours very truly,

TRUCKEE-CARSON IRRIGATION DISTRICT,

By _____

By _____

WASHOE COUNTY WATER CONSERVATION DISTRICT,

By _____

By _____

SIERRA PACIFIC POWER COMPANY,

By _____

By _____

By _____

By _____

APPENDIX 4

GAI:EW

DEPARTMENT OF JUSTICE

WASHINGTON D.C.

May 24, 1934.

MEMORANDUM FOR MR. BLAIR

Re: Consent decree in United States v. Gila Valley Irrigation District, et al.

This suit was brought in 1925 in the United States District Court for the District of Arizona to adjudicate and quiet the rights of the United States to the use of water from Gila River for the irrigation of Indian lands and lands in what is known as the San Carlos Irrigation Project in Arizona. It was filed about a year after the taking effect of the Act of Congress of June 7, 1924, entitled "An Act for the continuance of construction work on the San Carlos Federal Irrigation Project in Arizona, and for other purposes." (43 Stat. 475), which authorized the Secretary of the Interior, through the Indian Service, "to construct a dam across the canyon of the Gila River near San Carlos, Arizona, as a part of the San Carlos Irrigation Project, as contemplated in the report of the Chief Engineer of the Indian Irrigation Service submitted to the Commissioner of Indian Affairs on November 1, 1915, at a limited cost of $5,500,000, for the purpose, first, of providing water for the irrigation of lands allotted to Pima Indians on the Gila River Reservation, Arizona, now without an adequate supply of water, and second, for the irrigation of such other lands in public or private ownership, as in the opinion of the said Secretary, can be served by water impounded by said dam without diminishing the

supply necessary for said Indian lands; provided that the total cost of the project shall be distributed equally per acre among the lands in Indian ownership and the lands in public or private ownership that can be served from the waters impounded from said dam."

This impounding dam was completed early in 1932 and has a storage capacity of 1,285,000 acre feet of water. It occupies a portion of the San Carlos Indian Reservation in the eastern part of Arizona and was established in 1872 by Executive Order for the benefit of the Apache Indians, numbering at that time about 2,000. Farther down the Gila River and within 40 or 50 miles of the City of Phoenix is the Gila River Indian Reservation, which was established in 1859 on behalf of the Pima Indians, numbering at that time about 5000. Commencing a few miles up the Gila River from the San Carlos or Coolidge Reservoir and extending on through what is known as Safford Valley, and beyond that the Duncan Valley, in Arizona and New Mexico, are located a number of towns and villages inhabited by farmers and horticulturists, whose predecessors were pioneers from neighboring territories, principally from Utah, and who, in early days, made their homes here where nature appeared to offer many advantages and opportunities for the creating of a thrifty community life. These pioneers began immediately taking out water from the Gila for the irrigation of crops along its course, and their successors have continued increasingly to put the water to service until today there are in these valleys something like 40,000 acres of cultivated land under irrigation from this stream.

There are numerous rights to the use of water from Gila River aside from those asserted by the Upper Valleys

people. These, however, come below the San Carlos Reservoir and do not present the difficulties of those above. Had it not been for the apparent menace to the rights of the Government on behalf of its Indian wards by the assertion of vested rights in the Upper Valleys people regardless of claimed priorities under and by virtue of the implication of rights arising from the establishment of the Gila River Indian Reservation, this suit would not have been brought. I will venture the assertion, also, that if the relationship of the Upper Valleys users to the stream had been understood or appreciated as well as it is today, this suit would not have been brought. The original Bill of Complaint shown evidence of having been prepared hastily and without proper consideration either as to geographical areas or with any purpose of descriminating [sic] between rights of recognized standing and those apparently in conflict with the interests of the Government.

In 1928 the Bill of Complaint was amended and the limits of litigation cut down and the allegations regarding the Government's rights were more definitely set forth. At that time some parties, deemed unnecessary originally, were left out, but other parties deemed necessary to a complete adjudication were added. It has been somewhat difficult to keep within reasonably necessary bounds both as to parties and geographical extent. It was determined sometime after the amended bill was filed and after careful consideration, that quite a number of parties located on tributaries of the Gila, notably the San Francisco River, were not necessary to the adjudication of the Government's rights. There had also been made parties a large number of persons who had entered into contracts with the Government for the use of water from the San Carlos Project. These rights were in no sense in conflict

with the Government's right so far as the project was concerned. There is in this case not presented a conflict of rights as to diversions from the stream itself, that is from ordinary stream flow. The Government had two purposes in view in constructing the San Carlos Reservoir, namely: First, to take care of the rights of the Indians located on the Indian reservations, especially the Pimas on the Gila River Reservation; and, second, to develop the area below the reservoir and above the Gila Indian Reservation, which promised successful development for the use of white landowners.

The project provided for by the Act of Congress of 1924 contemplated storage of flood waters which, the records of many previous years had shown, were – because of being uncontrolled – wasted into the Colorado River and the Pacific Ocean. It was, in other words, a flood water venture. Natural stream flow, if any such can be said to exist in the Gila River, is and has been of such negligible character as to amount, that it could not have been in the mind of Congress except as a purely incidental element. The record shows that floods of enormous proportions have come down the Gila River in years past, sometimes carrying destruction to land on either side. The reservoir is of such capacity as to stop these floods in their course and hold them back for beneficial distribution on lands below. This, presumably, will take care of the Indian lands more beneficially than uncertain stream flow would have done and, in addition, provides for the development of an otherwise barren area of desert land. The interests of the Upper Valleys people, it cannot reasonably be presumed, were ignored by Congress in the launching of this project. While they could not possibly be affected directly by the construction of the reservoir below their land, and had no

occasion to question any right to deal with the waters of the stream below them, they were confronted immediately upon the inauguration of the project with the demand that they pay the Government for the water rights which they had used throughout the years. They were informed that as the Gila River Indian Reservation had been established many years before the settlers in the Upper Valleys came into the country, their rights were secondary and inferior to the Indian rights; that in the year 1859, when the Indian reservation was established, the United States had reserved, under the doctrine later announced in *Winters v. United States*, 207 U.S. 564, and the extension of that doctrine in *Conrad Investment Company v. United States,* 161 Fed. 829, all of the waters of the Gila River necessary, presently or prospectively, for the development of the Indians.

The principle established by the Winters case, namely, that "The power of the Government to reserve the waters and exempt them from appropriation under state laws is not denied and could not be" and that upon the organization of an Indian reservation the Government reserves all water rights which may be necessary then and thereafter, is present in all suits between the United States on the one hand, and private proprietors on the other, where Indian reservations are involved. It gives rise immediately to the question of priorities, which is undoubtedly the most important question with which the courts have to deal in matters of this character. In my opinion, this principle need not be asserted by the Government in the instant case to the extent of preventing the Upper Valleys settlers from using the water upon their lands as heretofore and as at present employed thereon. As a practical matter, the capacity of the San Carlos

Reservoir will not be affected to any appreciable extent if the upper communities are allowed to go on as they have in the past.

The Gila River is a peculiar stream. I have had occasion at various times to observe, personally, some of its peculiarities. It is a stream of unusual fluctuations, varying from occasional floods of tremendous proportions to no flow at all except such as returns after use by irrigation. A large part of the water used by these farming communities returns to the stream and finds it way along the natural bed to the reservoir. There is necessarily some loss by reason of evaporation and to some extent by percolation and by plant use, but the return flow is unusually heavy along the particular segment of the river through these valleys and to the reservoir. My opinion that as a practical matter the continued use of water by them as heretofore would not appreciably affect storage by the Government in the reservoir, is based upon personal experience in relation to this stream, as well as the statements of people of a longer familiarity with physical conditions at this point. With this in mind, and also with the idea that under the facts as they presented themselves, the litigants should not be required to carry any longer the burdens of protracted litigation, I suggested sometime in 1931, I believe, the advisability of the Government's attempting to have the suit dismissed. This did not meet with favor on the part of officials of the Department of the Interior and the litigation continued. Soon, however, the thought took form that the parties might agree upon some common ground for the adoption of a consent decree. In the meantime a Special Master had been appointed to take testimony and some proof was submitted. This consisted mostly of documentary evidence

and had no immediate connection with any of the multitude of rights involved in the suit. The Department's Special Assistant in the field was instructed to negotiate with parties on the other side, it having been first ascertained that there was a readiness on their part to endeavor to reach common understandings. Negotiations were carried on by representatives of the various parties and it was finally found that the principles to be used as a basis for a decree had been agreed upon. It was tentatively understood that the Upper Valleys users were to have their rights determined upon what was, for convenience, designated "the substituted storage plan", by which they were to recognize the Government priorities and to pay the Government a consideration based upon acreage for the right to use water for beneficial purposes. However, when the negotiations were in progress, the depression came and this discouraged the idea of incurring obligations on the part of the upper communities of any substantial amount. The substituted storage plan as then considered would have meant the payment over a number of years of something over $400,000. This was considered by some of the more practical farmers as being distinctly favorable, as it would remove what to them was the menace of the Government's reserved right with priorities ahead of their own in relation to the stream flow, but it failed to carry when submitted to the body of the people making up the communities affected.

Further consideration by representatives of the government in the field, led to the making of a somewhat different proposition which, having been submitted to the Upper Valleys people, was accepted. It is still a substituted storage plan but takes care of the money consideration originally submitted and in a way it appears to be

satisfactory to all parties concerned. A decree was drafted in 1932 which purported to fix and define in harmony with understandings that had been reached, all rights involved in litigation and provided for machinery for the administration of the decree. It required a tremendous amount of research work with almost infinite detail as to individual rights. It made provisions for the elimination of unnecessary parties, and for the addition of necessary parties. It fixed the duty of water in second feet and acre feet. A large part of it consisted of schedules and tables in which each tract of land involved in the litigation was described by section, township and range. It set out in separate columns dates of priority, commencing with the year 1846, and the name of the proprietor in relation to each priority, the location of each diversion dam, as well as each ditch taking water out of the river, and determined the quantity of water in second feet which each parcel of land was entitled to with a limitation thereon in acre feet. This decree, substantially as then prepared, with the exception of that feature which relates to the adjustment of the relative rights between the United States and the Upper Valleys people, has been accepted by substantially all of the parties as satisfactory. They are now waiting for the Department of Justice and the Department of the Interior to approve what has been done, and upon such approval, they appear to be ready to adjust every remaining difference and bring the case to a close by the adoption of a consent decree.

The part of the decree which settles the rights between the Government and the upper Valleys people is incorporated in Article VIII. Because of its importance and the difficulty of analyzing its involvement. I have thought it best to set it out in full. It is as follows:

ARTICLE VIII.

That the diversions of water from the Gila River by the so-called upper valleys defendants (parties defendant to whom rights to divert water from the Gila River at points above the San Carlos Reservoir are decreed herein), comprising the defendant canal companies named below with the parties defendant named in the Priority Schedule and attached tables who are decreed rights through the canals of said companies and are served thereunder, and certain individual parties defendant who are accredited with rights to divert directly from the stream through private ditches, to wit:

Albert Canal Company, Billingsley Extension Canal Company, Black & McCleskey Canal Company, Brown Canal Company, Colmenero Canal Company, Colvin-Jones Canal Company, Cosper & Windham Canal Company, Cosper & Windham Extension Canal Company (Under contract whereby Cosper & Windham Canal Company makes actual diversion) Curtis Canal Company, Dodge-Nevada Canal Company, Duncan Canal Company, Fort Thomas Consolidated Canal Company, Fourness Canal Company, Graham Canal Company, Moddle Canal Company, Montezuma Canal Company, San Jose Canal Company, Sexton Canal Company, Shriver Ditch Company, Smithville Canal Company, Sunflower Canal Company, Sunset Canal Company, Tidwell Canal Company, Union Canal Company, Valley Canal Company, York Canal

Company; York Cattle Company R. H. Angle, J. H. Brown, T. D. Burton, W. C. Craufurd, J. W. Foote, R. C. Gilleland, J. H. Henderson, C. C. Hester, F. E. Ross, R. Sexton, Laura Short:

and/or their predecessors in interest, for the irrigation of the lands described in said Priority Schedule made part of Article 7 hereof, since their inception have been made under rights which were and are junior and subject to certain extensive rights of plaintiff to divert the waters of said stream at points below the diversions of said defendants and also below the San Carlos Reservoir, which said rights of plaintiff are set down and referred to in said Priority Schedule, but are further identified and particularly described in Article VI and VII hereof, it being evidenced thereby that the earliest right of plaintiff is prior in time to all and every of the rights of said defendants, and certain of plaintiff's other rights are prior in time to certain of the rights of said defendants; that, however, plaintiff and said defendants, in recognition of the desirability of making it practicable for said defendants to carry on the irrigation of said upper valley lands to the extent to which the areas to which their said rights apply heretofore have been irrigated and so that the said San Carlos Act shall inure in part to their benefit and this suit may be compromised and settled, have agreed that the following provisions shall be and they are hereby embodied in this decree, which said provisions in turn, and in so far as they affect the other parties in this cause, shall inure to the benefit of and be binding upon them, to wit:

(2) That on the first day of January of each calendar year, or as soon thereafter as there is

water stored in the San Carlos Reservoir, which is available for release through the gates of the Coolidge Dam for conveyance down the channel of the Gila River and for diversion and use on the lands of the San Carlos Project for the irrigation thereof, then the Water Commissioner, provided for herein, shall, to the extent and within the limitations hereinafter stated, apportion for the ensuing irrigation year to said defendants from the natural flow of the Gila River an amount of water equal to the above described available storage, and shall permit the diversion of said amount of water from said stream into the canals of said defendants for the irrigation of said upper valleys lands in disregard of the aforesaid prior rights of plaintiff used on lands below said reservoir; the diversion of said amount of water by said defendants to be in accord with the priorities as between themselves stated in said Priority Schedule and for the irrigation of the lands covered by the rights accredited to said defendants in said Priority Schedule and the quantity of water permitted to be taken by said defendants in disregard of prior rights of the United States below is in addition to and not exclusive of the rights of said defendants to take from the stream in the regular order of, their priorities as shown by the Priority Schedule, but of course within the duty of water limitations of this decree; that if and when at any time or from time to time in any year, water shall flow into said reservoir after said date of first apportionment and shall be stored there and become added to the available stored water in said reservoir, the said commissioner shall make further and additional apportionments to said defendants of the natural flow of said stream as the same is available at the diversion points of said defendants, which

said apportionments shall in turn correspond with and be equivalent in quantity to the amount of such accessions or newly available stored water supply; that in calculating apportionments of the stored water supply the Water Commissioner shall make appropriate deductions for losses for evaporation, seepage or otherwise that may be suffered between the time of the apportionment and that of the diversion of a corresponding quantity of waterfrom the stream; that such apportionments, corresponding with net accessions during each annual period after first apportionment, shall be made by said Water Commissioner at least as frequently as once per calendar month (provided accessions to stored supply have occurred during that period) and at such more frequent intervals as the conditions in his judgment may demand – his decisions in these regards to be subject to summary review by the Court as provided in Article XII hereof and said Water Commissioner shall see to it that his said apportionments, when made, forthwith shall be placed of record herein and so posted or published as to inform all interested parties in that regard with reasonable promptness and despatch [sic]; it being herein explicitly provided that no apportionment or apportionments, made during any calendar year, shall carry over or be available in any manner for the succeeding year; that the diversions made by said defendants of the natural flow of the Gila River thus apportioned to them in disregard of the said prior rights of plaintiff shall be regulated by the Water Commissioner (under the authority and powers given him by this decree and/or by such further orders of the Court as may be made in that relation) in accord with the rights and priorities accredited to each of said defendants in said Priority Schedule,

provided always that such diversions shall be limited to the amount of water then apportioned, as aforesaid, and in any event, during each irrigation season, do not and shall not exceed the total amount of water called for under the right accredited in said Priority Schedule to any given defendant, namely: 6 acre feet per acre for the irrigation season as defined in Article V hereof; and provided further that the drafts on the stream by the upper valleys defendants shall be limited to a seasonal year diversion which will result in an actual consumptive use from the stream of not to exceed 120,000 acre feet of water; said consumptive use made in any seasonable year shall be determined by adding the recorded flows at a guaging [sic] station located in the Gila River at Red Rock Canyon above the heading of the Sunset Canal in New Mexico and a guaging [sic] station located in the San Francisco River immediately above its confluence with the Gila River and deducting from said sum the recorded flows at a guaging [sic] station located on the Southern Pacific Railway bridge crossing the Gila River near Calva, Arizona; and the Water Commissioner shall determine what diversions are permissible and reduce diversions in the inverse order of their priorities when and to the extent necessary to accomplish the aforesaid result. The aforesaid measurements shall include the whole flow of the stream, including floods, at the three points of measurement, and no allowance shall be made for accretions or additions to the flow between the point of measurement at Red Rock Box Canyon, and the confluence of the Gila and San Francisco Rivers, and in turn between the confluence of the Gila and San Francisco Rivers, and the aforesaid guaging [sic] station at the Southern Pacific Railway Bridge.

Said method of measurement is adopted as sufficiently accurate for practical purposes and as better suited for administering this decree than any more refined method of determining actual consumptive use.

(3) Upon agreement made by the owner of any right set forth in the Priority Schedule for land in the Safford Valley, water may be diverted by the owner of land in the Duncan Valley within the duty of water in this decree set forth and within the apportionment of water for said Duncan Valley land in disregard of such Safford Valley right or rights, and that such waiver shall in no way deprive the Safford Valley lands thus waiving of their full apportionment of water herein provided for based on water stored in the San Carlos Reservoir or their full right to take from the stream, in accordance with their priority and within the duty of water fixed by the decree as against water rights of the United States held on account of the San Carlos project, but the right of the United States to insist upon its priorities as defined and modified herein as against said Duncan Valley lands shall not be abridged by this provision.

(4) That water released at the will of the plaintiff and for the purposes of the plaintiff from the San Carlos Reservoir at any time after the date of this decree other than for the proper irrigation of 80,000 acres of land or its equivalent in the San Carlos Project, shall be considered as stored in the San Carlos Reservoir at and after the date of such releases, and available as a basis for the above-described apportionment of the natural flow to said defendants as it would be if such withdrawals had never been made.

> (5) PROVIDED ALWAYS, that if by reason of lack of available storage in the San Carlos Reservoir no apportionment of the natural flow of said river is or can be made available to said defendants, then the diversions of said defendants, of or as soon as apportionments previously made to them have been consumed, shall no longer be made in disregard of the prior rights of plaintiff below said San Carlos Reservoir, but shall instead be made under and in accord with the rights and priorities set down in Article V, and the Priorities Schedule made part hereof, and Article VI of this decree to-wit: in accord with their several priorities as same are set down in said Priority Schedule and subject to the prior rights of plaintiff as same are referred to therein and further described in Article VI of this decree.

The arrangement thus incorporated in the decree assumes that the construction of the federal project was intended by Congress to inure in a way to the benefit of the lands of the upper valleys. Article VIII is so written as to carry this into effect in a practical way by allowing them to use the water as in the past, but under restrictions based upon available storage for use of the San Carlos project; and, although the provision generally applicable to the lands in suit regarding duty of water is recognized, the ultimate amount accorded to the upper valleys lands is limited by what the decree terms a "consumptive use" of not more than 120,000 acre feet of water during the irrigation season (calendar year).

In order to make this unusual arrangement workable, it became necessary to adopt certain arbitrary provisions. There must be some fixed point relating to storage for the project below at which these defendants cease to participate. This point is set down as being sufficient storage "for

the proper irrigation of 80,000 acres of land, or its equivalent, in the San Carlos project." Any quantity released above that is considered as stored and used as a basis for apportionment of natural flow to these defendants by the water-master or commissioner in administrative control. Then there is a saving proviso which regulates them to such rights only as are fixed by the Priority Schedule affecting all parties in the event of lack of available storage. Article VIII operates as an exception to the general scheme because of the unusual situation occupied by the upper valleys land, and the set up contained in Article 7 continues to be the basis upon which are determined the water – rights of all the parties to the suit.

Mr. Truesdell in a recent statement to the Commissioner of Indian Affairs sets down the principal advantages of the arrangement in the following words:

> The principal advantages of this settlement to the Indian and white lands of the San Carlos Project are:
>
> (a) It settles their rights in the natural flow of the stream to an extent and with priorities deemed satisfactory and perhaps much better than could have been obtained if the suit were fought out;
>
> (b) It defines the Upper Valley lands having water rights and limits their uses, and by giving the San Carlos Project a storage right as of 1924, does much to protect that project from future unwarranted encroachments on the stream above the project lands. And the chief advantages to the Upper Valley lands are: (a) the removal of the menace of enforcement of prior rights below as long as the San Carlos Reservoir storage conditions are met, thus giving those

> lands a reasonably secure water right; and (b) bringing them into an ordered administration with San Carlos Project lands and so giving them a sort of recognition and perhaps preference, if further protection for them should be found feasible in the future.

Article V, in brief, regiments the stream and sets up schedules which contain minute details of all rights of the parties and the date of priority of use based upon appropriation or diversion. It fixes the limitation of the amount of water to be used generally. Six acre feet per acre is the seasonal use. An acre foot is a quantity of water one foot in depth covering each acre. This use is limited, however, by diversions based upon cubic feet per second flow. It says that while six acre feet is the maximum amount of water . . . "it shall not be diverted from the stream at any time during said season at a greater rate than 1/80 of a cubic foot per second for each acre of land." That is a general provision. There are some exceptions based upon unusual conditions left to the disbursing commissioner or watermaster. Beneficial use of six acre feet per acre would be an unusually low duty of water in most of the western states where irrigation is in vogue, but it is perhaps about right in Arizona considering the long irrigation season which is equivalent to the calendar year, the extremely warm climate during a major portion of the year and the insufficient amount of seasonable precipitation. The duty of water based upon second feet, namely, a service of one second foot to each 80 acres of land, is about as high a duty as can be found in any jurisdiction in the west. The apparently low duty in acre feet and the high duty in second feet act as checks one upon the other, and the adoption of the two measures is highly beneficial under the circumstances.

Article VI, which is also referred to in the article which deals with the upper valley lands, is in the nature of the compromise. It first deals with the rights on behalf of the Pima Indians of the Gila Indian Reservation. The amended Bill of Complaint alleges that the allotted area of 49,896 acres is entitled to 632 second feet running continuously throughout the year with a limitation for each year of 252,730 acre feet diverted through canals conveying water to these lands and also by means of the Ashurst-Hayden Dam, located about ten miles above the town of Florence, Arizona, and the Sacator Dam, located on the reservation. The decree, however, allocates 210,000 acre feet during the irrigation season for these lands from the natural flow of the river at the above-mentioned dams, at a rate of diversion not exceeding 437.5 second feet at any time during the season upon 49,896 acres plus an administrative area of 650 acres "to the extent that the hereindescribed water right which is sufficient for and limited to the needs of 35,000 acres." It appears to be the opinion of all who have looked into the conditions affecting these rights, that water sufficient to serve beneficially 35,000 acres from natural stream flow to the points indicated, is entirely sufficient to meet the requirements. The claim for a 50,000 acre service with an immemorial priority, as alleged in the amended bill of complaint, is based upon the principle of implied reservation by the Government on behalf of the Indians. The facts as to irrigation of these Indian lands appear to be that something like 12,000 acres has always been irrigated, and that about 23,000 acres had been irrigated in the aggregate but not at one time.

Mr. Truesdell in his report to the Commission of Indian Affairs makes this statement in support of the reduced limitation of acreage to 35,000 acres – "The 35,000

acre figure was chosen as the one best fitting the conditions." Ethelbert Ward, Special Assistant to the Attorney General, is of the opinion that this amount is far in excess of anything the court might be reasonably expected to award. It should be remembered that this disposition is made without any change whatever as to priorities of use. The priorities are maintained as alleged in the bill of complaint.

The claims made on behalf of the Apache Indians on the San Carlos Reservation present quite a different situation from that which affects the Pimas on the Gila River. The Pimas are an industrious, farming race. The Apaches are and always have been warlike and in no sense agrarian, but little of the land within their reservation is susceptible of profitable cultivation, and but little has been irrigated since the establishment of the reservation. Also, there are some private rights of the Upper Valleys people that antedate the time of the establishment of the reservation in 1872. As to some other rights there is conflict as to this priority. It would be a weak case to submit to the court upon the facts that could be adduced. Opinion has been expressed by a number of parties on the Government side of this case that in the event of submission upon the facts, the court would allow little, if any, water for Apache lands. The Government has adopted no plans for the irrigation of any land within this reservation. However, the amended bill of complaint asks for water for the irrigation of 3,000 acres and an allocation on that behalf of 37½ second feet of water. The settlement arrived at for the purposes of the consent decree gives this reservation enough water for 1000 acres with a priority second only to the right of the Pimas, and allocates 12½ second

feet of water for that purpose. This settlement is, in my opinion, a wise one.

The question here arises as to what to do with the water thus decreed to the Apache Reservation. There is little prospect of it being used there. Out of practical consideration of this matter there has been evolved a plan whereby the irrigation districts of the Upper Valleys may under certain conditions and within the limits of time, acquire this right by purchase. This, after a fashion, takes the place of the original proposition that the upper valley users under the first substituted storage plan should pay the sum of $10 per acre for the water necessary for their beneficial uses above the reservoir. Paragraph two of Article VI attempts to take care of this feature. It permits the Upper Valleys Irrigation Districts to purchase this 12 ½ second feet water right for $62,500 to be paid within "two years from the acceptance of said offer, if said offer shall be accepted within five years from the date of this decree." The paragraph hedges about this feature a saving provision that it must in no way conflict with local law. Presumably the purpose is to avoid any conflict which might in the future arise regarding the established law as to changes of points of diversion, that is transferring the right to divert lower down the stream to points above. This provision is very unusual. It is the one provision evidently agreed upon between the parties about the propriety of which there is some question in my mind. However, if it is necessary that this feature be retained in order to effectuate the general settlement of the suit, its peculiarities and unusual character should not be considered the determining fact. This matter has been submitted to Mr. Ward for further opinion. He has so far done nothing except approve the scheme as a whole.

Article VI also makes the transfer contingent upon its being sanctioned by law, which presumably means that Congress will be asked to legislate before it is consummated.

In the other articles of the proposed decree the allocations regarding the Government's rights on behalf of its Indian wards and for storage, are definite and in every instance, except as above indicated, the priorities under its reserved rights, as well as under the large appropriations of 1916 for purposes of the storage reservoir, are protected and clearly set out. The Secretary of the Interior is authorized to distribute under contract certain waters for municipal purposes, pursuant to the Act of Congress approved March 7, 1928. The proviso in that respect reading as follows:

> That the Secretary of the Interior is authorized to contact with the State of Arizona, and certain towns, villages, and municipalities of that state, for delivering water to them from the San Carlos Project under such terms as he shall think best, etc.

Appropriate provisions are made in the proposed decree in this relation. I deem it unnecessary to go into further analysis of the proposed decree. I have set out the features of the decree which have been the center of controversy with adversary litigants. The other features are such as are necessary in the making up of a document which requires specific allocations of a multitude of separate and distinct rights. These rights are scheduled and are set out in minute detail in many tables covering more than 100 pages. They are the result of painstaking care and able endeavor to work out the problems along lines of fairness and equity. Necessarily it has taken a long time to

reach the results attained. The first draft of the decree was prepared by Mr. Oliver P. Morton in collaboration with Mr. Truesdell, then Superintendent of Irrigation of the Indian Service, and Mr. Southworth, engineer of that service. Later on it became necessary to make a number of changes, the important ones being those relating to the Upper Valleys lands and the water rights of the Apache Reservation. During the last two years, since the services of Mr. Morton ceased, valuable and effective assistance has been rendered in the way of negotiations and discovery of necessary facts by Mr. Howard Elliott of Phoenix, who has devoted much time as representative of the Upper Valleys people in submitting facts and aid in making necessary adjustments. Recently, Mr. Ward of Denver has devoted much of his time in connection with the matter. Numerous motions and other papers to be filed in court, the purpose of which is to eliminate unnecessary parties, add other necessary parties, dispose of interests represented by answering defendants, etc., have been prepared under the direction of Mr. Ward and with the assistance of the United States Attorney for the district of Arizona, and matters are in such shape at the present time that the final work of shaping the decree for signature of the court is awaiting the approval of the scheme woven into the consent decree by the Attorney General and the Secretary of the Interior. I have no difficulty in recommending that it be approved with the understanding that such corrections as may be necessary, growing out of possible errors of description, or otherwise, be taken care of, and this may well be left in the hands of the men who are intimately familiar with all the facts necessary to a complete determination. Much time and labor have been spent in checking and rechecking, and I doubt that there will be any inaccuracies or errors of moment when the document is

finally submitted. This decree, if adopted, will in my opinion result in as satisfactory a determination as is humanly possible to reach.

As hereinabove stated, I was, at the time of the inception of negotiations for a consent decree, in favor of a dismissal of the suit. It was my idea at that time that the use of water by the Upper Valleys people, the ones offering the major controversy with the Government, would not interfere with the Government's plan, but that if interference with such plan by the upper valley water users should eventuate, then the Government had its remedy by going into court and enjoining wrongful use. However, the difficulty in connection with the dismissal without the consent of answering defendants was at once apparent, and no serious attempt was made in that direction. However, the decree as now prepared has fortunately resulted in something better than a dismissal would have meant. The water rights are definitely allocated and every necessary right is taken care of.

I recommend that the Department of Justice approve the work shown by the submitted articles and the statistics accompanying these articles, later to be put into proper form. These matters are merely incidental and in the main mechanical.

Respectfully submitted,

/s/ G.A. Iverson
G.A. Iverson,
Special Assostant [sic]
to the Attorney General.

APPENDIX 5

Los Angeles, California.
August 4, 1926.

Mr. Edward A. Smith,
Special Assistant to the Attorney General,
Federal Building,
Phoenix, Arizona.

Dear Mr. Smith:

Other matters have kept me from answering your letter of July 16th, about the San Pedro River in connection with the adjudication suit, before this.

I thank you very much for the information you give us as to allotments made to Indians on that stream or its tributaries. If you finally decide to include the San Pedro in the adjudication, I think these allotments should be taken into account and rights in connection with them should be fully set up.

As to the basic question of the advisability and propriety of including the San Pedro in the adjudication, I am inclined to adhere to my views expressed to the Department of Justice quite a long time ago. However, I have an open mind on the subject. I feel sure that I could consider arguments pro or con without being in the least bit prejudiced by my former opinion.

The broad features of the situation are as follows:

The stream is of the flash variety. The low reasonably dependable flows are used by ranches very close to the stream itself. This condition has existed for a great many years and one peculiar feature of it is that the water seems to be used over and over again. After these ranches have made their uses there is very little water in the river, if

any, to reach the Gila out of these low flows. In fact the river is often dry where it joins the Gila and also is often dry at other points throughout its own course and sometimes is dry and wet at intervals throughout that course. As I remember it, the opinion of the engineers is that even if these old uses on the San Pedro were cut off entirely, and the water left in the stream, the contributions to the Gila from these low flows would not be increased to any worth while extent from the standpoint of the Pima Indians and others interested in the San Carols Project. In fact as I remember the situation it might turn out that conditions with regard to these low flows would be less advantageous to the project.

If the foregoing is the true situation, the Government would not be interested in having the numerous rights on this stream listed and given priorities in this suit on account of the San Carlos Project or for anyother [sic] reason that would warrant the inclusion of this stream in the suit unless it would be merely to make the adjudication a more complete one than it would be if the San Pedro were left out. In other words it might be argued that in as much as the Government has undertaken to settle and administer water rights on the Gila River, say from the west line of the Gila River Reservation to the New Mexico boundary, it ought to include in that adjudication all tributaries within those limits. The argument would be that even if the Government's interest did not require such a complete adjudication it ought for the public welfare of Arizona to make the adjudication complete and thus give the private water users within this area the benefit of the full adjudication. I think there might be something to this argument if persons on the Gila other than the Government, would be interested in having the rights on all these

tributaries settled. As I see the facts they are not thus interested. It is of no importance to the private users of water on the Gila proper to have rights in the San Pedro settled. The situation with regard to them is exactly such as it is with regard to the Government. The same is true as to the San Carlos River though for different reasons.

As to furnishing the people on the San Pedro River with an adjudication of their rights in this suit merely for their own benefit, I think there is nothing to that. In the first place I do not understand that they want an adjudication and in the second, it would be unscientific to tie their rights in with those of the Gila proper if at the same time the decree had to recognize the fact that their rights ought not to be fitted into and listed with the priorities on the main stream.

So far I have discussed merely the low flow. Turning to the high flows, the Government and the San Carlos Project are considerably interested in these. When the river is in flood water comes down from it into the Gila in considerable volume. Of course the project has no means of storing this water. It follows that its only direct use on the project is to take the place off water that the project would otherwise have to draw from its proposed San Carlos Reservoir. Of course it has an indirect value to the project in satisfying possible prior rights below the project lands.

These high flows can not be interfered with by users on the San Pedro so as to harm the project unless they are stored on that stream. There is only one reservoir site there of any importance; it is the Charleston, southwest of Tombstone and not very far from the Mexican Border. This site is in some respects a fairly good one. I do not remember whether the dam site has been bored so as to see

whether it is an adequate site. I understand though enough in the way of borings or excavations have been made to develop the fact that it is a considerable distance from the surface of the ground down to bed-rock, some eighty feet as I remember. About ten or twelve miles of the El Paso and Southwestern Railway are in the reservoir site and would have to be moved. All together it seems unlikely that this site will be used at any time in the near future and possibly that it never will be used.

Even if the site is used there is no certainty that storage of water there would be detrimental to the San Carlos Project. There is so much of the San Pedro watershed that lies below this site that the stream would probably give the San Carlos Project the same benefit of floods after the Charleston Reservoir should be built as before. Furthermore, if the reservoir were built a large quantity of the water there stored would be used upon lands so situated that the return flow from them would come into the San Pedro. This would hold up the low flows of that stream and would give a greater low flow yield to the Gila River. It seems that storage on the San Pedro would help the project, but even if it would not and the Government wanted to insist upon its priorities with regard to high flows as against such storage, it could do so when the time arose and do it easily and simply by bringing an injunction suit.

The foregoing are the principal considerations I have had in mind. There are one or two others, however, among which are the desirability of not making the suit any more cumbersome than necessary and also the need to avoid putting others as well as the Government and the project to unwarranted expense. In line with this last idea I always feel that it is just as important, if not more important, to have

satisfactory reasons for including a tributary or an area in an adjudication suit as it is for excluding it. The shores of the Department of Justice are more or less strewn with the wreckage of adjudication suits and much of this wreckage has come from trying to include too much in the way of territory, tributaries, and the like. A recent example is the Pecos River matter.

I am simply dictating this letter from memory. Mr. Southworth I am sure would be glad to check the broad facts and to give you the stream flow records, etc., on which they are based.

If you have not already done so, and I do not imagine you have yet had the opportunity, I want to suggest that you make a trip over the land in question. You could go to Oracle a very pleasant mountain place about thirty miles from Florence and spend the night. From there much of the San Pedro region lies out before you so that you can see the general character of the lower part of its watershed and also can see the character of the watershed of its principal lower tributary, the Aravaypa. From Oracle it is a relatively easy and pleasant trip down to Mammoth on the San Pedro and from there to where the stream joins the Gila. One making this trip could return to Oracle for the night and on the next day could either go straight up the river by an old and poor road to Benson, if that road is passable, or could go around to Benson via Tucson on an excellent highway. From Benson which is on the San Pedro it is a pleasant and instructive trip along that river past the old irrigation. I have referred to, to the old town of St. David and to Tombstone and Charleston. One could stay all night at Tombstone if necessary and from there proceed to Charleston which is on the river and from Charleston you can go up the river swinging around the

mountains near the Mexican Border to Bisbee. From Bisbee one can return on a splendid highway to Phoenix in a single day. Of course one could easily proceed from Bisbee to Silver City and the head waters of the Gila proper.

Very truly yours,

(ad) John F. Truesdell

Superintendent of Irrigation

JFT:HG

APPENDIX 6

Coolidge Dam Project
San Carlos, Arizona.
September 23, 1926.

Mr. Edward A. Smith
Special Assistant to the Attorney General
Phoenix, Arizona.

Dear Captain Smith:

Referring to your letter requesting my comments on the San Pedro River adjudication, I may say that Mr. Truesdell's and your own ideas accord very closely with mine.

From an engineering standpoint the San Pedro River is not a very large factor in the water supply of the Indians, or the closely related San Carlos Project. As has been pointed out, it is a flash stream, pure and simple. Rapid erosion of relatively recent years has made its course a wide channel, very gravelly and sandy in its nature. The normal or average flow soon sinks into the gravel and while rock ledges or other obstructions occasionally bring it to the surface, especially in its upper reaches, yet the quantity reaching the Gila is almost negliable [sic]. It, undoubtedly, would be very hard to show that any substantial quantity of the low flow would reach the Pima Indian lands even though undiverted along its course.

As has also been pointed out, we do expect to make a rather limited use of the flood flows of the San Pedro. This is entirely dependent upon our facilities for its diversion. While a reservoir at Charleston might at times shorten the "lag" of a flood and accordingly decrease our diversion possibilities yet on the other hand a flood on top of a full reservoir, or any flow over the spill-way would act to

increase the quantity subject to diversion. In times of heavy rainfall or flood conditions the large watershed area below the proposed Charleston dam would undoubtedly furnish more water than we could divert. Increased irrigation through storage and consequent stream flow regulations would increase the low or underground flow reaching the Gila.

Personally I can not see any benefit to be derived, as far as the Indian interest is concerned, from an adjudication of the San Pedro water. It would seem also, in view of possible storage development, that to involve the San Pedro in what might prove to be protracted litigation would work a hardship on the land owners and otherwise create a condition which we ought, if possible, to avoid.

Very truly yours,

Engineer.

cc to Mr. Truesdell
Supt. of Irrigation.

APPENDIX 7

B M P

4691-03-250 &

Post Office Box 357,
Phoenix, Arizona,
October 20, 1926.

Attorney General,
Washington, D. C.

In Re: United States vs Gila Valley Irrigation District, et al, Globe E-59.

Sir:

Yours of October 5th and 6th received, and I am endeavoring in this to give you my general point of view in regard to this suit of adjudication. It must be remembered that it is extremely hard for the Government to prosecute a suit of this kind, and I am greatly of the opinion that the results desired in the suit already started could have perhaps been reached in a more simple manner; however, now that the suit has been brought, for various reasons, both psychological and otherwise, which no doubt suggest themselves to your mind, it would be far better to continue the prosecution of it than to attempt to drop it and begin a new suit.

A careful study of the bill of complaint, together with conditions that exist in the matter of contracts with the whites in the Florence-Casa Grande District, and also the peculiar situation that exists in relation to the three irrigation districts on the upper reaches of the river, to-wit: Virden, Franklin, and Gila Valley, leads me to be strongly of the opinion that this complaint should be re-drawn. I am now and have been for some time working upon that theory and the motions that I sent you a short

time ago are motions leading toward a simplification and precise naming of various defendants.

A new bill of complaint should be drawn, stating in a better and more definite manner the rights of the plaintiff. It could be so drawn as to much better describe the defendants to the suit. By this I mean especially distinguishing between those whose interests are on the side of, and those whose interests are opposed to the United States; and in this connection, I think a much more accurate statement should be made as to the ways in which defendants encroach upon rights of the United States. In the redrawing of this complaint, when the rights of the United States (which include those of the Pima Indians together with the whites in the Florence-Casa Grande Project, the Apache Indians, and any other rights owned by the United States) have been set up, due consideration should be given to having this done in such a manner that some method can be provided, if this is possible, of dispensing with elaborate answers.

In a case involving as many defendants as there will be in this one, the plaintiff will have to prove its case in any event for the reason that it will be practically impossible and at least impracticable to search through the numerous pleadings and attempt to rely upon admission made by any defendants. Unless this simplification is carried out, the pleadings will be so voluminous that the case will be practically endless. I am of the opinion, therefore, that the Government should offer in the bill of complaint itself and by way of agreement or stipulation said stipulation or agreement to be generally signed and having the Court's approval, that the averments of the bill of complaint should be taken as in issue without formal

pleading, or possibly this same result could be reached in a motion for an order.

Another point which must be taken up either concurrently or immediately after deciding upon the plaintiff's rights and complaints is the territorial scope of the suit for adjudication. You already have on file in your office a special report on the San Pedro River phase of this adjudication which gives in part my ideas of the territorial scope of this suit. There is one point at the present time which I am considering and am going into as fast as possible in regard to this phase of the question and that is the question of extending the suit in the state of New Mexico. I am not yet satisfied on the legal points involved and if there is clear authority to have the adjudication disregard state boundaries, the addition of certain lands in that part of the Duncan Valley which extends into New Mexico and possibly the addition of another small valley further up the Gila River might be very desirable. However, this is a matter which must be subject to considerable investigation and will be determined to some extent by information which I am now gathering through conferences with the Indian Service Department. While the foregoing matters are being gone into and decided, it is also very desirable to decide who are the proper parties defendant. In fact, these three questions are so entirely dovetailed and interlacing that they must be decided and worked out in the most definite manner each with the other.

In a suit for the adjudication of water rights, I have come to believe that the end sought is the allocation of water to particular lands. This ordinarily can be reached by making the diverting agencies defendants on the theory that they can represent the lands even though they are not the ultimate owners of the water rights or by adding to

these diverting agents the water owners and users themselves, and if this end is attained, the adjudication suit has attained its purpose.

The State of Arizona has done a great deal of work making water adjudications within various districts that the present suit is supposed to cover, and it seems to me that it would be wise for the Government to attempt to use these adjudications as far as they are reasonable [sic] accurate. Of course, the Government can not do this as a matter of right and it will have to be done by agreement or stipulation which, I am of the opinion, if the bill of complaint is re-drawn or amended properly, can be accomplished. In considering the question of defendants, there also arises the fact that while many of the potential defendants are members of water users' associations or ditch companies, yet apparently there are a number of water users who have old rights and are not members of water users' associations and are getting their water through appropriations made and small ditches constructed by them and these users' lands are situated in most instances just outside of or between districts. This class of water users has to be thoroughly investigated, their source of supply, whether or not they do have some connection with the water users' associations, whether their names are still on the records, or if they still are users of the water, must all be gone into before an intelligent opinion can be formed.

The list of defendants now named in this adjudication numbers somewhere in the region of 450. In my investigations up to the present, I have already found (this I have spoken of in my monthly reports) quite a number who were deceased and had been deceased for some time prior to the filing of this suit. I have found a great many who

were referred to as "John Doe" defendants that I have been able to locate and give their proper names. I have found many errors in the spelling of names and errors in the initials as to the exact naming of defendants. I have found a number who were not named as defendants who, when the proper scope of this adjudication has been arrived at, no doubt will be proper parties defendant, and a number who have made answer though not named as parties defendant. So, that in the ultimate analysis of this case, we are bound to have some hundreds of defendants.

I would like to say just a word here in regard to the warning order which is on file in this suit. The only reference or attempt at a basis on which to place the warning order that I have been able to find is in the following:

"That certain others of said defendants, to-wit: Nochols and Company, Franklin Canal Company, four other corporations, and thirteen defendants are named as defendants as doing business in the District of New Mexico, County of Hidalgo, or resident thereof."

Another paragraph on page thirteen of the printed bill of complaint, beginning on line twenty-five states:

"First: That a subpoena may be issued out of and under the seal of this Honorable Court directed to the above named defendants who are residents of the said District of Arizona as aforesaid and that warning orders may be duly issued to such of said defendants as are residents of the District of New Mexico and that an order for service upon such defendants as cannot be found be duly published, according to law, commanding them and each of them to appear before this Honorable Court on a certain day and under a certain penalty to be herein inserted, to answer this Bill of Complaint sentence by

sentence and paragraph by paragraph the same as if the same were again repeated and him thereunto particularly interrogated, setting up fully their claims to the waters of the said Gila River and its tributaries."

This warning order was based upon those two allegations while at the same time every party defendant named in the bill of complaint is named in this warning order with no supporting affidavits filed, giving the court no allegation or certainty as to what defendants this warning should apply. Quite a number of defendants named in the warning order have already been served, and I am fairly well grounded in the opinion that in a suit of this character every defendant can be reached either through some water district, some irrigation canal company, or through the land upon which the water is supposed to be used. Having the proper parties in court with proper service is one of the vital requisites in a matter of this kind.

A careful analysis of this adjudication shows that as far as the present water users are concerned, who are listed as parties defendant, will ultimately become also witnesses in the case as it will (if the complaint is redrawn) cause them either by making a showing in court or by agreement and stipulation to show their usage, appropriation, and right to use. This is undoubtedly true as it relates to defendants other than the Indians. The matter of evidence as far as the Indian use is concerned is almost entirely a matter of record and of law. If the record evidence can be obtained, and I sincerely believe it can, that will bring the Indian use of the lands and water and the intention of the Government toward reserving water for their use, at the time of establishing the reservation, under the Winters Decision, there will be little need for parole evidence.

I am bending every effort toward the early solution of this case along the lines indicated in your letter, and I feel that the Government should be ready to procede [sic] with the trial whether or not it can use the decrees already promulgated by the state courts; but in any event, the work of presenting the Government's case will be very great. The Government will be under the necessity of taking care of its claims on behalf of the Indian wards and its projects as well as the whites that it represents on account of the contract with the Florence-Casa Grande Association. Many certified copies of public documents will have to be obtained. The Indian Service has much exhaustive and valuable data which will have to be gotten into shape.

Such progress as I have briefly outlined above, I feel will meet with the approval of the Indian Service; it will also be approved by the white users in the Florence-Casa Grande District, who are working on the side of the Government. I also feel certain that this program will be approved by friends of the Indians generally. I am also entirely convinced that to carry out this program will save time and expense; that if the Government attempts to go ahead with this adjudication suit under the bill of complaint as it now stands with the existing unnecessary wide scope of the suit, with no provisions made for the simplification of the pleadings, the result will be delay and confusion. The time to straighten out these matters is now, even though it does appear on the face of it that we are moving with no great degree of rapidity. To be of its greatest value, the adjudication must cover water rights accurately to some 150,000 acres of land, provided the scope of the suit is limited, and to a considerably greater acreage if the scope is not limited but is allowed to stand as it is at

present. To do this work well, in my mind, is the principal issue; to do it promptly is most desirable; but the obtaining of proper and satisfactory results rather than getting quick results is really the important consideration.

Very respectfully,

Edward A. Smith,
Special Assistant to
the Attorney General.

EAS: G

APPENDIX 8

IN THE DISTRICT COURT OF THE UNITED STATES,
IN AND FOR THE DISTRICT OF ARIZONA,
Globe Equity No. 59

THE UNITED STATES OF AMERICA, Plaintiff, v. GILA VALLEY IRRIGATION DISTRICT, AND MANY OTHERS, Defendants,	BRIEF of THE UNITED STATES

PURPOSE, SCOPE AND NATURE OF SUIT

THE OBECT [sic] OF THE SUIT IS TO ADJUDICATE RIGHTS TO DIVERT WATER FROM THE GILA RIVER WITHIN A DEFINED AREA, OR STORE IT ABOVE FOR USE WITHIN THAT AREA. THE SUIT IS IN THE NATURE OF ONE TO QUIET TITLE TO REAL ESTATE.

This suit is one to adjudicate water rights within a specified area of the Gila River. That area is defined in the complaint and roughly embodies the stretch of the river extending from the lower or western end of the Gila River Indian Reservation, up that stream, to a line parallel with the boundary between the States of Arizona and New Mexico, but 10 miles east thereof. The idea is to settle rights of diversion along this stretch of the stream, excluding, however, rights to divert water of the tributaries – the Salt, which flows into the Gila on the western edge of the Gila River Reservation; the Santa Cruz, which reaches the

Gila on the Reservation west of Florence; the San Pedro, which comes into the Gila above the Ashurst-Hayden diversion dam, some 10 miles upstream from Florence; the San Carlos, . . . comes into the Gila on the north within the site . . . Coolidge reservoir; the San Francisco, which joins . . . also from the north above the Solmonville-Safford . . . below the Duncan Valley; the San Simone, which is an extremely flashy wash stream and comes into the Gila from the south below the Duncan Valley, and all parts of the Gila River proper above the line mentioned as being some 10 miles within the State of New Mexico.

The purpose of thus limiting the scope of the suit is that it is thought that the so-called Kent Decree and other adjudications adequately protect the rights of the United States as far as matters here in controversy are concerned on the Salt River, and that the situation is such that no useful purpose would be served by attempting to adjudicate rights and administer diversions from the stream in this action outside of the territory mentioned, except to determine the rights of the defendants named, if any, to store water on reaches of the Gila River above the territory mentioned and above the Coolidge reservoir for purposes of using it within the general area covered by this suit.

The suit is primarily intended to protect the rights of the plaintiff, the United States, but it is realized in so doing it will necessitate the administration of the stream within the area mentioned, by this court, and therefore an opportunity is afforded for a full settlement of rights within that area – a settlement between the defendants among themselves, if they so desire, as well as a settlement between the defendants and the plaintiffs.

The suit is in the nature of one to quiet title to real estate. The rights which the plaintiff, the United States, sets up and claims are distinct property rights and of the same general character as rights in land. The United States, here, does not set up and seek to have its title quieted to all of the rights it owns in this stream within this area, but simply to the rights described in the complaint.

APPENDIX 9

IN THE DISTRICT COURT OF THE UNITED STATES
IN AND FOR THE DISTRICT OF ARIZONA

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The United States of America, Plaintiff,	)	Globe Equity No. 59
vs	)	Motion to Dismiss
Gila Valley Irrigation Dist., et al. Defendants.	)	Certain Defendants

Comes now the United States of America by John G. Sargent, Attorney General, through Edward A. Smith, Special Assistant to the Attorney General, attorneys for the plaintiff, and moves to dismiss the action heretofore filed in this Court in relation to the Boquillas Land and Cattle Company and the San Pedro Water Users' Association, heretofore named as defendants in this action, without prejudice and without cost, said defendants having prior to the submission of this motion withdrawn their answers, heretofore filed in this action, the motion to dismiss being made for the reason that the said Boquillas Land and Cattle Company and the San Pedro Water Users' Association are not necessary parties to the action and that the purposes of this suit and the interests of these defendants will be better served if they are not made parties defendant.

Edward A. Smith,
Special Assistant to
the Attorney General.

APPENDIX 10

MEMORANDUM RE HISTORY AND STATUS OF THE GILA SUIT SETTLEMENT

1. The trial of this suit was halted early in 1931 in pursuance of a general understanding between defendants and the Government (the Departments of the (Interior and Justice) that concerted effort for a settlement should be made, and that the basis for it then being discussed indicated that it should result favorably. In accomodation [sic] of this undertaking the hearings before the Master have been adjourned from time to time – generally for sixty day periods – it being the conception of the parties generally that the pressure incident to keeping the suit alive would tend to expedite the negotiations and insure the cooperation of the interested persons.

2. The issues between the so-called upper valleys defendants (above the San Carlos Reservoir) with their 40,000 odd acres of cultivated lands, and the plaintiff with its Indian and Project rights below covering 100,000 odd acres of land, make up the main controversy on the river. This is proposed to be settled by a so-called substituted storage arrangement under which the said upper valley defendants will be allowed to divert from the natural flow of the Gila, in disregard of plaintiff's prior rights below, in accord with apportionments of that natural flow based on the available storage in the San Carlos Reservoir, being relegated to their junior rights (or to be more accurate, to the rights and priorities stated in the Priority Schedule) when no such apportionments are available by reason of lack of storage. The settlement also involved the disposal of quite a large number of other controversies, mainly growing out of claim of rights to the natural flow of the Gila in the so-called Winkleman area below the San Carlos

Reservoir but above the San Carlos Project, and claims by landowners in the Florence-Casa Grande territory but outside the presently designated or determined boundaries of the San Carlos Project. It was conceived that the settlement, if fully effective and adequate, would involve a definition and determination of all existing rights in the Gila River within the scope of the suit, and the elimination of all parties who did not belong in the suit but happened to be there by reason of mistakes, inadvertencies or the like which occurred before our advent.

3. The settlement, in order to make it readily enforcible [sic], was planned to be embodied in a so-called consent decree which would fix and define, in accord with said settlement and in every detail, all rights involved in the litigation, and provide the machinery for their control and administration. Our job, therefore, has been in effect to ascertain and establish, by consent as distinguished from trial, all of the rights involved, and to set them down in the form of a valid and effective decree which, upon its being assented to in writing by the defendants on the one hand and by the plaintiff on the other (presumably through the assenting signatures of the Attorney General and Secretary of Interior) would be signed and entered by the Court. As planned, the matters of adding the necessary new parties, of the elimination of those not needed or improper, and of the taking of further orders pro confesso and the like, are to be handled by appropriate process in advance of the entry of the decree. As minor changes in the name schedule, where so many hundreds of the people are involved, are likely to be needed up to almost the closing hour, it is proposed to have the necessary motions and orders made just before filing the decree, under one

comprehensive notice charging all proper parties, which in turn will work an economy.

4. While the method proposed for settling the main controversy has been agreed to in principle by the parties, the undertaking, as is apparent, has been primarily made up of negotiating, digging up the material for, and putting together a complete document which can be signed and made the instrument of perpetuating the settlement. The preparation of this document has kept pace with the various phases of the negotiations, and is in the form of an assumption that the negotiations will result favorably and that all ancillary proceedings in support thereof will have been taken. Upon being notified that lack of available funds made it necessary to transfer the conduct of these matters in the Government's behalf to the United States Attorney's office of Phoenix, I turned my attention from pending negotiations to the completion of the proposed decree, at least in draft form, as the best method of extending aid to my successor in the matter. This draft is attached to this memorandum and the following comment upon the particular Articles thereof will show in outline the tasks which are yet to be undertaken in the premises.

TITLE OF THE CAUSE

5. The title of the cause which will head the decree will contain the names of all those who at any time have been made parties defendant in the suit under and since the amended complaint. It is here in a draft form with the names of the defendants set down in alphabetical order. The list includes those who yet are required to be added to the suit as new parties. The draft as it stands should be correct in the large but will require proof reading and a final check against

the record. A cross check should show that parties separated from the cause plus parties accredited with rights by the decree equal defendants named in the title.

ARTICLE I.

6. The first paragraph of Article I records dismissals of the suit and amended complaint heretofore made, with the list of parties defendant so affected. Paragraph 2 of the same Article records, as if done, the dismissal of the suit and amended complaint as to an extensive list of parties defendant. These lists have been made up with care but will require a final check against the title and the record. The inclusion of a considerable number of these names involved somewhat close decisions as to how those particular parties should be disposed of in the case; also the Florence-Casa Grande Water Users' Association is a special case in that it has answered showing its members have interests in common with the Government. A formal assent by its solicitor should support the dismissal.

ARTICLE II.

7. The first paragraph of Article II records, as if done, the dismissal of the suit and amended complaint as to the defendants there listed. These men and concerns are located on the tributaries and do not belong in the suit. However, they are answered for by Solicitors Ellinwood & Rose (for Arizona Copper Company and Phelps-Dodge Corporation and Morenci Water Company – the latter now being represented by Morris & Malott of Globe) and Solicitor H. A. Elliott for the others; such answers, as usually is the case in the water suits of this character, setting up affirmative matter. Duly executed stipulations

in the premises with above named corporations are in the office files, with the understanding that counsel will have an opportunity to see our proposed motions and orders, and the stipulations with the other similarly situated defendants, etc., when the time comes for their filing and presentation. My memorandum to Mr. Elliott of June 1, hereto attached, will explain the situation of his clients here, and submits a stipulation in the premises. I understand that he regards it as necessary, at least as to a considerable number of said defendants, that he have special authority from them to sign the stipulation and is planning to consult them in the field.

8. The second paragraph of Article II record, [sic] as if done, the dismissal of the suit and amended complaint as to the defendants there named. Stipulations are required in this instance also because of the fact that answers setting up affirmative matter were filed for these people. You will notice that the dismissal in this instance is 'with prejudice'. The questions involved here are discussed in my memorandum to Mr. Elliot (already mentioned) and to Mr. Gust of June 16, which is also attached to this memorandum. In passing, it should be noted that Schedules marked "A" with each of said memorandums show corrections in names which will have to be made as a part of the proceedings described in the latter part of paragraph 3 above. A memorandum for Mr. Denton, soon to be complied, will make a similar showing in its Schedule A. As a measure of precaution, we had planned to make another and final check against the record of the data given in these memorandums.

9. The third paragraph of Article II has to do with the proposed special dismissal of the cause as to the defendants there named, and further assumes that stipulations

providing for said dismissals wil' be made and filed in the cause. The entire paragraph makes what might be regarded as the ideal set-up in the event that the somewhat delicate and necessarily rather extensive negotiations with these defendants should result in their elimination from the cause. These people comprise the so-called real defendants within the Florence-Casa Grande area. They have files [sic] answers setting up claims of rights to the waters of the Gila River but, in effect and perhaps primarily, are seeking by way of said answers to compel the Government to allow them to participate in the benefits of the San Carlos Project, claiming that their lands should have been designated as within said Project because of their location, rights to water, ect. [sic] Their lands if watered at all (unless by independent pumping operations) must look to the Government canals for their deliveries. The negotiations as to these people are in a quite delicate stage. To carry them forward would involve commitments for the future. They were curtailed on receipt of the letter from the Department of April 28, 1932, which in effect states that such commitments would be in violation of instructions. The fact was also in point that the United States Attorney had informed the solicitors in the cause more or less generally about a month ago that he was expected to take over this work.

10. The negotiations with the Fennemore and Stahl clients, which make up the second and third groups listed in the paragraph, have made some definite progress. There would seem to be a good chance, under skillful and fair handling, that those solicitors may be able to consent to have their clients eliminated from the suit along the lines set down in the third paragraph of Article II. Certain rearrangements of area are involved in one instance, and

in all it is the idea that their remedy, if any there be, must come out of the Department of the Interior, or even possibly Congress. The understanding with the clients of Judge Norviel, who make up the last group (Catherine A. Norviel, H.D. Thornton, and Helen Slaughter) may be regarded as fixed. As aforesaid, the matter is a delicately balanced one, and it was planned to expedite the (potentially favorable) negotiations with the Fennemore and Stahl clients, and under this advantageous precedent to take the matter up with Judge Baughn who represents the first, and in some measure the most troublesome, group in the paragraph.

11. A very considerable effort has been directed to this phase of the case by reason of its evident and somewhat unique importance. A failure to blast these people out of the suit apparently means an eventual trial of of [sic] the special issues involved. The idea of achieving a settlement regardless of their claims, although presenting some real difficulties, of course should be explored in due order.

ARTICLE III.

12. Article III provides for the separation of a considerable list of people from the suit for the reason that they are not necessary parties, having interests in common with plaintiff under contracts which assure deliveries of water under the direct reservations and appropriations of the United States. It is assumed that the solicitor for plaintiff, with formal assent of the other Department and attorney Robert Denton, who, in a sort of part measure, has answered for a great number of them under the aegis of the Florence-Casa Grande Valley Water User's Association, would have the power to accomplish the proposed

dismissal upon its own motion. The list, however, will require a final cross check against the record, San Carlos District files and title of the cause.

ARTICLE IV.

13. Article IV sets up the decree pro confesso which in due course necessarily follows the taking of orders pro confesso against those who have defaulted in making appearance, plea or answer. Quite a larger number of orders pro confesso were taken in the earlier stages of the suit, but apparently none were valid save those against the American Smelting and Refining Company, D. Bertoglio, Beatrice Perry, James B. Pruett, and Antonio Specia. The Article as it stands assures that orders will have been taken against the other persons named therein at least more than thirty days in advance of the entry of the decree. Spaces are provided in the list for the possible entry of the names of T.K.B. Glasspie and Grady L. Herring whose situation is further discussed in connection with the text for Article X.

ARTICLE V.

14. With this Article we enter into the more substantive part of the decree. It begins the text which has for its purpose an effective and adequate definition of the rights which are being adjudicated. As now written it contains items and paragraphs which are in accord with advanced and modem practice in the matter of setting up water rights in decree form. On the other hand the Priority Schedule and accompanying tables to which it refers are of voluminous and complicated character, and were I to be further occupied with the matter, I would make some

careful review of the possible further requirements as to the text which will introduce said Priority Schedule and tables. The defendants in the cause may also have some suggestions to make in this regard. The Priority Schedule, itself, which is made part of this article, may be regarded as a completed and checked document, I believe, save in a few particulars. It provides, insofar as they can be anticipated, blank spaces for those rights concerning which negotiations are still pending (primarily located in the so-called Winkleman area), and as to a certain few names and descriptions awaits further specific word from the field. It has been the plan, I think, of the counsel for the main group in the upper valleys to make it available by copy at some convenient place for examination by individual defendants as a sort of final check and perhaps, in passing, to charge their clients with notice as to the specific statement of their priorities in the decree. Its items in large measure are based upon various regional decrees and water commissioner's findings, as interpreted by defendants' engineer and the writer; undertainties, [sic] omissions and excesses being cured in so far as practicable as we digested the great grist of material before us. Headings for the various columns in the Priority Schedule are inserted for the first page; the completion of this typing job for the other sheets, as a measure of economy, being left until the last in discount of the possibility that the building of the Schedule through its various years might suggest some minor modifications in the headings. At the present writing they seem to me adequate as they stand, however, and presumably may be typed into the appropriate blocks when a clerk can be assigned to the task. The sheets of the Priority Schedule, and of the tables attached thereto, are numbered serially in Arabic. It is proposed to number the pages of the title and text of the decree,

running right through the document before and after the Schedule and tables, with worded numbers or Roman numerals.

ARTICLES VI and VII.

15. In the Priority Schedule it was practicable only to give intelligible references, under appropriate dates of priority, to the rights of the United States. Later Articles of the decree are there referred to for the specific set-up and description of said rights. Article VI does this and Article VII further defines the interior mechanism which is to regulate the handling of said rights. These Articles are generally self-explanatory so but little comment is needed here. The specific description of the 27,000 acres of 'White' lands covered by the Florence-Casa Grande appropriation, and of the 50,000 acres of 'White' lands (inclusive of the said 27,000 acres) which apply to the reservations and appropriations as of 1924, for the San Carlos Project, are set out in detail and in proper order of township and section on the large number of wide carriage sheets which are introduced at appropriate places in Article VI. As a matter of extra precaution these descriptions should have one more final check in the Project office, but I believe their present accuracy is pretty well established.

ARTICLE VIII.

16. This Article is an attempt to express, in the appropriate language of a decree, the adjustment and settlement between the United States and the so-called upper valleys defendants, which latter make up the main body of the so-called real defendants in the cause. The text of the Article, as will be evident from an examination of it,

has to do with the substantive and administrative phases of our so-called substituted storage adjustment with these people. It is a technical and rather complicated matter, and its set-up in the text of the decree no doubt will require some further careful consideration by the Government representatives. A fortiori the defendants and their solicitors will no doubt demand some further time for its consideration. As indicated in an earlier paragraph we are assured by them that it is acceptable in principal.

ARTICLE IX.

17. The Nevada Consolidated Copper Company is operating a large copper reduction enterprise on the Gila River below the San Carlos Reservoir but above the intakes of the Government canals. The rights under which it has been taking water from the river (or form the gravel beds directly supplied by the river) are junior to certain extensive rights of the Government below. The Article records an adjustment with the company under which their uses of water for their copper enterprise, and for the irrigation of some small ranches along the river, may be continued in disregard of plaintiff's priorities upon the payment of certain stated sums. This settlement adheres quite closely to the above described substituted storage plan, and apparently can be consummated in accord with the terms and conditions laid down in the Article. A suggestion by the company that a percentage of elasticity be allowed in top diversions when the enterprise is carrying a peak load is taken account of in the provision written upon a slip attached to the Article. It is conceived that the Government might well assent to this minor amendment. The rights and priorities of the company for its industrial and irrigation uses had to be ascertained by some research

into the history of the district (the so-called Winkleman area), and joint investigations on the ground. These rights have been set down in their order upon a separate wide carriage sheet which is attached to this memorandum. It is proposed to introduce them into the Priority Schedule under the years corresponding with those named in the Exhibit.

ARTICLE X.

18. This Article has to do with certain other priorities and rights in the so-called Winkleman area, which as aforesaid lies below the San Carlos Reservoir and above the Project diversion dams. The principal owner and claimant, outside of the Nevada Consolidated, is one Joseph J. Anderson whose ranch was instituted on the river in the year '78, and has been a going concern (save for occasional failures to divert water on account of floods or otherwise) since that time. Grady L. Herring, although in default on the face of the record, also apparently has a small right as of a late date of priority. T. H. B. Glasspie is a claimant but there is apparently a lack of evidence in support of any irrigation on his place during the last eight years. Both of these names were included as possible subjects for orders pro confesso as well as in this place. As a matter of strategy it was the plan to dispose of them as soon as a favorable settlement had been reached in the more serious case of Joseph J. Anderson. Negotiations with the latter were on their way to a conclusion a short time ago, but could not well be followed up under the conditions described in the above comment on the third paragraph of Article II and because of the necessity of devoting all of my time to the production of the decree form to which this memorandum refers. Anderson is

represented by attorney Holzworth of the Phillips, Holzworth and Phillips firm at Phoenix and is an old-timer with positive and extra-legal theories, for example, about his priority over Indian claims. Never-the-less, favorable progress was made in his case, and it is conceivable that there is yet a good chance, by skillful and fair handling, to settle with him along the lines indicated in the Article, which again corresponds with the substituted storage plan proposed for the upper valleys defendants and involves the payment of a stated sum per acre in consideration of his being allowed to divert stated amounts of water in disregard of Government priorities below. Failure of settlement here would involve an eventual tribal of the Government suit as against Anderson, unless under current financial difficulties, he should decide to take his chance under such rights as of course will be allowed him in the priority table.

ARTICLE XI, XII, and XIII.

19. These Articles, I think, are I [sic] accord with modern practice and are self-explanatory in their character. The appointment of a Water Commissioner to administer the decree is provided for his general duties outlined. Article XIII carries the usual injunction against interference with the rights defined in the decree, and makes other formal and necessary provisions in the premises, including the common expedient in cases of this sort of having each party assessed with his own costs in a suit.

OLIVER P. MORTON

Dated: Phoenix, Arizona, June 27, 1932.

APPENDIX 11

Florence, Arizona,

December 29th, 1931.

John Mason Ross, Esq.
Ellinwood & Ross,
Luhrs Tower,
Phoenix, Arizona.

My dear Mr. Ross:

In the matter of the relation of your clients, the Arizona Copper Company and Phelps Dodge Corporation, to the Government's suit to adjudicate rights on an extensive part of the Gila River, it may be well for me to supplement our somewhat recent conversations with a letter.

The geographical limits of the suit were set on the east with the idea that a line drawn from north to south ten miles east of the boundary between New Mexico and Arizona and excluding the tributaries, would include all of the diversions from the stream which ought to be covered by a suit of the sort the Government had in mind. It was considered, when the suit was brought, that diversions from the tributaries and from the main stream above the point indicated were not of such a character as to necessitate their determination. It was thought also that they might not have to be fixed or interfered with at all; and that in all events their handling should be left to the future.

Your clients and others who divert from the tributaries or otherwise outside of the area meant to be covered by the suit, were made defendants through inadvertence. It is our view, as we have already explained in conversations, that from our standpoint, and we think also from your

own, they should be dismissed from the suit, and of course without prejudice.

We understand the idea that it might be of advantage to your clients to have their rights settled as against the San Carlos project and other Government interests and also as against the other parties to the suit. It seems to us, however, that the place they would gain in the schedule of rights would not give them much of practical value unless they were admitted to the substituted storage scheme planned for the agricultural lands which are within the scope of the suit and lie above the San Carlos Reservoir. It is possible for the Government to bring those agricultural lands into such a scheme because they have used a certain considerable amount of water in the past which has not been counted upon by the San Carlos Project. It is therefore possible for that project, for a consideration, to allow those lands to take water in disregard of the project's earlier priorities during certain stages of water in the reservoir.

This situation however, is not paralleled by that of your clients whose past uses have been small in comparison with the uses you contemplate for the future.

It seems to me that the matter of fixing your clients rights to divert from the stream as against the Government's interests, which are principally those of the San Carlos Project, is a matter that should be left to the future. When you know What [sic] development you wish to make and therefore your need for water I should think that it would be entirely feasible for you to make an arrangement with the San Carlos Project. The basis of such an arrangement, I imagine would be found in the fact that there is water entering the river above the San Carlos Project

but below the Coolidge dam, especially from its tributary, the San Pedro, and also in the fact that underground waters perhaps not directly connected with the river can be made available to that project by pumping. I should think it would be feasible for your company to provide the means for making waters of this character available to the project in return for which the project could agree that your company divert from the Gila or its tributaries to the extent of its needs above the San Carlos Reservoir.

Obviously any arrangement of this sort would have to be made after your clients' needs are pretty well understood. Equally clearly of course I cannot promise anything as to the future or bind the Government or the project or even myself in any way. It simply seems to me that it is wise from both your standpoint and that of the United States for your clients to be dismissed from the suit, and that the physical and legal situation is such as to make it possible for you clients to get the water they need upon reasonable terms.

Very truly yours,

John F. Truesdell,
Chief Field Counsel.

APPENDIX 12

GILA RIVER ADJUDICATION SUIT, ARIZONA

Memorandum for the Commissioner of Indian Affairs and the Solicitor of the Interior Department

John F. Truesdell, March 26, 1934.

1. In trying to settle this suit through the entry of a consent decree it may be necessary to ask the court to dispose of the case, through dismissals without prejudice or by some other means, as to certain parties who will not join in the general consent. The right to such disposition is not clear. Ordinarily we would have to proceed with the trial. But in a case of the magnitude of this one when all but a few of the numerous parties desire to settle and when to proceed with the trial would take a great deal of time and be expensive and in the end might not achieve results obtainable now by a settlement, we think the court has the power and would have the inclination to aid the settlement in the way suggested.

In presenting the matter to the court I think the Government's representatives ought to be able to say that the settlement has the approval of both the Department of Justice and the Department of the Interior; and that, if the disposition of parties asked for is made, the Attorney General and the Secretary of the Interior on behalf of the plaintiff, the United States will join the remaining defendants in consenting to the entry of the decree formally and through their signatures.

2. This suit, contemplated before the passage of the San Carlos Act which provided for stored water for the Indian land and such White lands as could be taken into the San Carlos Project, was decided upon as necessary and was instituted by the Department of Justice in 1925, which

was after the passage of the San Carlos Act. Its purpose was and is to define rights in the Gila river, exclusive of its tributaries, from the point where that river is joined by the Salt River, at the foot of the Gila River Indian Reservation, to a line parallel with and ten miles east of that which divides Arizona from New Mexico.

3. The chief difficulty has been to reconcile the rights and equities of the United States on account of the Pima Indians and their reservation, and rights of the United States on account of its Florence-Casa Grande and San Carlos Projects, with the rights and equities of some 40,700 acres of land in the Safford and Duncan Valleys which are situated above the San Carlos Reservoir, and which we commonly call the Upper Valleys.

Irrigation in these Upper Valleys has been going on since 1872. Based upon it, substantial communities have been established. But the important thing is that all this has been going on in disregard of the prior rights to water of Pima Indian lands and White lands situated farther down the river.

The San Carlos Reservoir, which has been constructed for the benefit of these lower Indian and White lands now contained in the San Carlos Project, more than compensates for the out-of-turn drafts on the stream of these Upper Valley lands, Also in estimating the water supply available for the San Carlos Project, measurements of the river flow were made below these Upper Valleys and so after the river has been depleted by the irrigation there.

In settling the suit it seems fair, and within the broad intent of Congress, in providing money for the San Carlos Project, to make the San Carlos Reservoir inure in part to the benefit of these Upper Valley lands. This can be done

by allowing those lands to use water somewhat as they have in the past byt [sic] under definite restrictions and only to the extent that the reservoir during the yearly irrigation season supplies stored water for the San Carlos Project lands.

Accordingly a plan, called the "substituted storage plan", has been worked out and is embodied in the proposed decree. Briefly it allow [sic] the 40,700 acres of Upper Valley lands to divert from the stream in the order of their own priorities, or in part as may be agreed between the Safford and Duncan Valleys, and within the duty of water fixed by the decree, in disregard of the prior rights of the San Carlos Project but limited to the extent that water has bee [sic] stored in the reservoir during the year and limited also to an annual net draft of not more than 120,000 acre feet.

4. The principal advantages of this settlement to the Indian and White lands of the San Carlos Project are: (a) it settles their rights in the natural flow of the stream to an extent and with priorities deemed satisfactory and perhaps much better than could have been obtained if the suit were fought out; (b) It defines the Upper Valley lands having water rights and limits their uses, and by giving the San Carlos Project a storage right as of 1924, does much to protect that project from future unwarranted encroachments on the stream above the project lands. And the chief advantages to the Upper Valley lands are: (a) the removal of the menace of enforcement of prior rights below as long as the San Carlos Reservoir storage conditions are met, thus giving those lands a reasonably secure water right; and (b) bringing them into an ordered administration with San Carlos Project lands and so giving them a

sort of recognition and perhaps preference if further protection for them should be found feasible in the future.

5. The settlement has been discussed so much and has been so fully reported upon from time to time in the past that I think only a few features of it need to be touched upon here. The full draft of the decree made by Mr. Morton as Special Assistant to the Attorney General in charge of the suit for the Department of Justice, with Mr. Walter Elliott's able assistance throughout and especially on the long schedules of rights and priorities, remains the basis of what we are presenting now. Only a few and, in my view, unimportant changes have been made. These are described and discussed at length in the memoranda referred to in the general stipulation for settlement and in subsequent letters and other reports.

6. The Indian rights given by the decree are so important that I wish to speak of them again briefly.

7. The amended bill of complaint claims for the Pima reservation a first right with immemorial priority for all of the so-called primary allotments (those intended to be irrigated) which amount to some 50,000 acres. This claim was made on the sound legal principle of an implied reservation by the United States of enough water to carry out its purpose in reserving the land, Under this principle the amount of water needed and intended to be reserved becomes the question for the courts to determine. In deciding this important question the main factors are: the area on the reservation which could be irrigated from the stream, the Indian population at the time of the reservation and at the time of the trial; their aptitude for farming the quantity of land they have irrigated in the past; their

own and the Government's intentions as to future irrigation as shown by irrigation works and the like, etc.

In the case of the Pima reservation, these tests were met satisfactorily. The Pima always had been irrigators and the plans of the Government for actually irrigating the 50,000 acres were elaborate and were being prosecuted vigorously.

8. When requests to settle the case came from the Upper valley defendants and the Government in the field had instructions from the two departments to settle it, the matter od [sic] determing [sic] the extent of the Government's reserved rights for the Pimas' reservation and also for the Apaches' reservation became one of negotiation. Those things had to be determined in the light of the forgoing principles and with regard to the rights of others and with a view to arriving at a fair and workable decree.

In the Pima case the government men had roughly three possibilities for the extent of the early reserved right: the something like 12,000 acres the Indians seem always to have irrigated; the 23,000 acres or so of land they had irrigated in the aggregate but not all at one time; the 35,000 acres contemplated to be irrigated under the Florence-Casa Grande Project; or the full 50,000 acres claimed.

The 35,000 acre figure was chosen as the one best fitting the conditions.

9. The Apache claim presented difficulties. There, neither the Indians, nor the Government for them, were irrigating from the river, and irrigation there from that source in all the past has not been great; the Indians did not have an irrigating history; and very important and discouraging to

the Government side was the physical situation which precluded irrigation from the river at a reasonable cost and the fact that the Government not only was prosecuting no plans for such irrigation but had none.

The claim was made, as I recall it, for the total reasonably irrigable area, 3,000 acres needing 37½ second feet of water.

As will be seen, the Government had a weak case. If the court had had an opportunity to rule on it nothing might have been given, especially unless a reasonable plan for using some amount of water could have been auggested. [sic] Since none such had been adopted, apparently, either before or after the San Carlos Act, the case as a case was weak.

The determinations of the settlement I think especially advantageous. The reservation is given enough water for 1000 acres with a priority second only to that of the Pimas. Also, since there is so little prospect of the right being usable due to the physical situation of the lands on the reservation and immediately above it and the requirement of law that changes of point of diversion, etc., can only be made to the extent that they do not injure others, a plan was devised and is embodied in the decree whereby the Upper Valleys may get rid of the menace of this right if the Indians wish to sell it.

Under this plan the right would be held merely as a support to San Carlos Project and Upper Valley rights as against other claimants in the stream, but would not be used otherwise.

10. Under the idea that the San Carlos Reservoir should be made to inure in part to the benefit of the Upper

Valleys, this benefit, which is given by the substituted storage plan, would have to be paid for: (a) by the lands in the San Carlos Project which must pay for the reservoir, (b) by the United Stated in providing the money for the reservoir either at low or no interest and a part of whose plan probably was to protect these Upper Valleys or (c) by the Valleys themselves.

Accordingly the Government field men suggested a payment of $10 an acre by those Upper Valley lands which would amount to $407,000. This payment was never regarded by the Government men as a very desirable thing. It would not go far in paying for the reservoir and it would tend to give the Upper Valleys a stronger claim in any further developments of the river then [sic] they would otherwise have. Accordingly, when the Upper Valleys, in later stages of negotiations, refused firmly to make this payment it was not insisted upon. Later developments looking to flood control on the upper parts of the river tend to show that this decision was a wise one.

11. The plan of allowing the Upper Valleys to get rid of the menace of this San Carlos Indian right, if the Indians cannot use it themselves and for that reason or otherwise want to sell, of course need not adopted. Equally of course the suggestion of a price was not meant to preclude asking more. Also the provisions of the decree with respect to this right are meant to enlarge its usefulness and salability and provide a market for it beyond those the Government representatives thought ordinarily would be available.

12. That feature of the decree which embodies the settlement of water rights made by the Secretary of the Interior under the act of 1916 and the designations made thereunder, and made by the formation of the Florence-Casa

Grande Project and the San Carlos Project with their appropriate contracts, is of course retained in the latest draft. It is mentioned here because of its importance.

The pleading in the amended complaint as it affected the Pima reservation was directed to supporting a large early right for the Indians and making it available where it could be best used. The legislative authorization was to construct the San Carlos Reservoir "for the purpose, first, of providing water for their irrigation of lands allotted to Pima Indians on the Gila River Indian Reservation, Arizona, now without an adequate supply of water * * * ". The Government men did not consider that any lands on the reservation already were supplied adequately. So they felt that all primary allotments should be given the benefit of both the early priorities belonging to the reservation and the stored water, and that the location of allotments should be changed when necessary to make that physically feasible.

In that way each allotted Indian would have one of his two allotments under the stored and pumped water of the project and with a share in the reservation's earliest rights. He would also enjoy the other benefits of the project including the diversion and distribution system, drainage, etc.

The [sic] bring this about it was deemed necessary to devote the old rights in the Gila as distinguished from the Salt, from which the Maricopa lands get their water, to the project lands. This leaves the irrigation on the reservation from the Gila below the project lands confined to technically secondary allotments and with later priorities.

I think this decision was a wise one and in fact the only wise and practicable one in view of the implied

character of the right that was being set up and the necessity, in fairness, to give all the allottees a share of the project's benefits.

I also think the plan adopted will work well. The valuable but relatively small amount of irrigation on the reservation below the project gets its water supply from reoccurrence of water in the bed of the stream, return flow and flows coming in below the project. As against the Indian and White lands in the project, I think there can be uses protected and made of first importance if the individual owners wish in respect to their allotments in the project and if that should ever be necessary. And as against claimants below the reservation I see no difficulty in defending those particular uses. Return flows after the project Indian lands are under full irrigation should give these lands below a greatly increased supply. The use of such flows to extend the acreage there should only be made, however, after carefully considering the waters [sic] quality, its permanence, and the reservation's rights to it as against diverters below the reservation.

13. The substituted storage plan is applied in part to the few non-project water rights between the Coolidge Dam and the Ashurst-Hayden Diversion Dam. The payment provided for in Mr. Morton's draft has been eliminated to conform to its elimination as to the Upper Valley lands.

14. As to the power of the Secretary of the Interior and the Attorney General to consent to the entry of this decree, containing as it does the substituted storage plan and the power of the court to enter it on such consent there is perhaps some room for doubt. As to this, a purely legal question, the Department of Justice and the Court are the better judges. It seems to me, however, that the Act of May

18, 1916, which gave the Secretary of the Interior the power to settle rights in water to be diverted at the Ashurst-Hayden Diversion Dam; the San Carlos Act, the 5th section of which authorizes the Secretary to do all acts necessary to carry that statue into effect; the general power of the Secretary over Indian Affairs; the larger inherent powers of the Attorney General to conduct and settle litigation in which the United States is involved; all coupled with the court's own authority, make the decree a proper one to enter.

I have no doubt Congress itself would authorize it if that were necessary.

15. In a suit, of the magnitude, as to the numbers of persons interested and the cumbersomeness of this one, there is always great difficulty in handling the parties. If we followed ordinary rules strictly, doing so would take unending time and probably would be futile.

Still the parties must be disposed of and substantial rights to be heard must be protected.

In this case we have difficulties in arranging the settlement as such as to contain parties whose interests in general are on the side of the United States but where there is some doubt of the propriety of the United States assuming to represent them. Here the questions are legal ones and the solution, if to be found in legal procedure, is a legal matter. Consequently here it is for the Department of Justice to decide. I have discussed the matter somewhat at length in a letter of mine of March 13, 1934, to Mr. Ward, and herewith enclose copies. My letter suggests solutions.

16. As to further work on the settlement I think what is needed, after I have gotten off my recommendation for

further designations of lands in the San Carlos Project, a thing I expect to be able to do with [sic] the next ten days, is mainly court procedure which is for the other department, coupled with such help as we of the Interior Department, and the men of the San Carlos Irrigation and Drainage District, and Mr. Elliott representing the Upper Valleys, can give in the way of getting people to sign stipulations and the like. Also, I take it we are perhaps needed to stand by in case any explanations of the workings of the substantial parts of the decree from a practical standpoint are needed, and in case any need for rewording those parts arises.

17. We all, in the field, regret that we cannot now present the decree in final form and in one document. That is physically impossible at this stage. We, hope, however, that Mr. Morton's draft with the memoranda mentioned above, and Mr. Elliott's compilation of the wording of the substance of the decree in its latest form minus the priority schedules, will be sufficient for present purposes. Mr. Elliott some time ago sent Mr. Wathen copies of this compilation and has just given Mr. Monahan one.

18. The final decree will be in the form and substance thus indicated except for last moment minor corrections, made only to express better the intent of the present form and any minor changes made necessary to meet the stipulations or the lack of them still outstanding.

What we need to know is whether this settlement meets with the approval of both departments and whether the Attorney General and the Secretary of the Interior will sign the assent to its entering when the full draft with disposition of parties can be presented.

19. I recommend this settlement, and think it would be unwise to attempt to change it in substance at this late stage except for weighty reasons.

Respectfully submitted,

John F. Truesdell
Acting District Counsel

JFT:md

Copy by F.S.

APPENDIX 13

IN THE DISTRICT COURT
OF THE UNITED STATES

FOR THE DISTRICT OF ARIZONA

THE UNITED STATES OF AMERICA, Plaintiff, vs. GILA VALLEY IRRIGATION DIST., ET AL, Defendants.	IN EQUITY NO. E-59-GLOBE MOTION TO DISMISS CERTAIN DEFENDANTS

Comes now the plaintiff, through its solicitor, Clifton Mathews, United States Attorney, and informs the Court that the following named persons were made parties defendant to this action through inadvertence and mistake, to-wit:

> Castlio Ditch; Thomas Crabtree; Ed Elrage; Dale M. Garden; Jensen Brothers; J.B. Johns; F. Vernon Jones; William L. Keppler; Randall Lunt; Vernon Lunt; M.J. McClaren; Hugh McKeen; William Milligan; Alfred Mortenson; Nichols & Company; Tomas Ponce; Serano R. Sexton; Ernest D. Shade; C.M. Short; Frank Shriver; A.R. Snyder; S. Stewart; T.L. Stockton; J.A. Suydam; Luther T. Sweeting; Miss E.A. Swofford; O.F. Swofford; Bonnie Ulrage; J.F. Wardner; and W.F. Willis.

The Court is also advised that said persons are not necessary parties to this suit for the reasons:

1. That all but six have no interest of any sort, and that the other six are outside the scope of the suit as defined in the Amended Complaint.

2. That none of them have filed, answered or appeared in any way in said action.

The Court is further advised that the following named parties defendant were also brought into the action through inadvertence and mistake or because they have transferred their interests to others who are made parties defendant, and that they and each of them are not necessary parties herein and should be dismissed, to-wit:

W.B. Barham; J.M. Biddle; Mary W. Bradshaw; Jackson Branaman; Martha M. Brockway; Fred D. Carpenter; E.D. Chandler; Dessa Harbison; Jim Harper; Jacob Helfenstein; A.S. Henry; Mrs. Alice Huntsman; John A. Johnson; A.E. Keoler; T.A. Lonergan; Clara B. McFarland; Gordon McMurray; William C. McNatt; R.B. Maley; Martha M. Merrill; Estate of Lizzie B. Murphy, W.F. Murphy, Sr., Administrator; John Nash; Ansel Phelps; Georgiana Phelps; George W. Sheerer; Chas. D. Stahlberg; Glodine Stahlberg; Phoebe E. Templeton; Estate of Jose Vasquez, Charles F. Bennett, Administrator; Albert Warren; Alice E. Nixon; Virginia Griffin; Horace J. Johnson; Mary Johnson; Lula O. Lockerd; and John C. Swan.

The Court is also informed that the following persons, to-wit:

Henry W. Blough, John F. Brown; Fred E. Gack; John MacGregor Goodale; Frank E. Hamilton; Frederick K. Kratzka; J.T. Lewis; James F. McManis; George W. Morrell; John O'Brien; Margaret T. Randall; Jennie Roberts; Earl F.

Smiley; Ole H. Smith; A.W. Sydnor; M.E. Templeton; Bart Vidans; Fannie Wallrich; W.G. Williams; and S.H. Wynn

were made parties defendant, but have never appeared or answered, and that since they were made parties defendant, their lands have been embraced within the San Carlos Irrigation and Drainage District; that by contract with the United States their and each of their lands have been taken into and designated in its San Carlos Indian Irrigation Project, and that their interests are therefore represented by the said district and the United States, the plaintiff herein, and their and each of their rights are set up and provided for in said decree by reason of such representation, and that they and each of them are therefore not necessary parties defendant herein.

The plaintiff also advises the Court that, the Estate of Della Tharp, Edward Tharp, Administrator and the Estate of James Tharp, Edward Tharp, Administrator, were made parties defendant herein. That neither of said estates as parties defendant or otherwise, have answered. That their and each of their lands were by contract made a part of the Florence Casa Grande Project; that their interests have been and are represented in this action by the Florence Casa Grande Water Users' Association and the United States, the plaintiff; that their interests are provided for and set up in the Priority Schedule in the proposed decree.

Basing its motion on the records herein and on the grounds hereinbefore stated, the plaintiff moves that the Court make an order dismissing this action and the Amended Complaint without prejudice as against the following persons:

Castlio Ditch; Thomas Crabtree; Ed Elrage; Dale M. Garden; Jensen Brothers; J.B. Johns; F. Vernon Jones; William L. Keppler; Randall Lunt; Vernon Lunt; M.J. McClaren; Hugh McKeen; William Milligan; Alfred Mortenson; Nichols & Company; Tomas Ponce; Serano R. Sexton; Ernest D. Shade; C.M. Short; Frank Shriver; A.R. Snyder; S. Stewart; T.L. Stockton; J.A. Suydam; Luther T. Sweeting; Miss E.A. Swofford; O.F. Swofford; Bonnie Ulrage; J.F. Wardner; and W.F. Willis.

Also that an order of Court be made dismissing the suit and plaintiff's Amended Complaint without prejudice as against the following defendants:

W.B. Barham; J.M. Biddle; Mary W. Bradshaw; Jackson Branaman; Martha M. Brockway; Fred D. Carpenter; E.D. Chandler; Dessa Harbison; Jim Harper; Jacob Helfenstein; A.S. Henry; Mrs. Alice Huntsman; John A. Johnson; A.E. Keoler; T.A. Lonergan; Clara B. McFarland; Gordon McMurray; William C. McNatt; R.B. Maley; Martha M. Merrill; Estate of Lizzie B. Murphy, W.F. Murphy, Sr., Administrator; John Nash; Ansel Phelps; Georgiana Phelps; George W. Sheerer; Chas. D. Stahlberg; Glodine Stahlberg; Phoebe E. Templeton; Estate of Jose Vasquez, Charles F. Bennett, Administrator; Albert Warren; Alice E. Nixon; Virginia Griffin; Horace J. Johnson; Mary Johnson; Lula O. Lockerd; and John C. Swan

upon the ground that they have no interest and that they are not necessary parties defendant herein.

The plaintiff also requests the Court to make an order dismissing the suit and Amended Complaint as against the following named defendants:

Henry W. Blough, John F. Brown; Fred E. Gack; John MacGregor Goodale; Frank E. Hamilton; Frederick K. Kratzka; J.T. Lewis; James F. McManis; George W. Morrell; John O'Brien; Margaret T. Randall; Jennie Roberts; Earl F. Smiley; Ole H. Smith; A.W. Sydnor; M.E. Templeton; Bart Vidans; Fannie Wallrich; W.G. Williams; and S.H. Wynn

upon the grounds that they have never answered or otherwise made a defense or plea to the Amended Complaint and that they are not necessary parties defendant, as individuals, because they and their interests are represented herein by the San Carlos Irrigation and Drainage District and the plaintiff herein, all as stated hereinbefore.

Plaintiff also moves the Court to dismiss this suit and Amended Complaint herein as against the Estate of Della Tharp, Edward Tharp, Administrator and Estate of James Tharp, Edward Tharp, Administrator, upon the grounds that they are not necessary parties for the reasons hereinbefore in this motion stated.

Dated this 30th day of March, 1935.

/s/ Clifton Mathews
Clifton Mathews, Esq.,
United States Attorney,
Solicitor for the plaintiff

APPENDIX 14

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF ARIZONA

THE UNITED STATES OF AMERICA,	)	
Plaintiff,	)	IN EQUITY
vs.	)	NO. E-59-GLOBE
GILA VALLEY IRRIGATION DISTRICT, ET AL,	)	ORDER DISMISSING CERTAIN DEFENDANTS
Defendants.	)	

This cause coming on to be heard upon motion of Clifton Mathews, solicitor for the plaintiff, requesting the dismissal of certain parties defendant from this action, for the reasons among others, that; the parties in said motion named and hereinafter named were made parties defendant, through inadvertence and mistake, and

That their, and each of their, interests, if any, in the issues involved in this action are outside the territorial scope of this suit as it was and is defined in the Amended Complaint, and

That said and each of such parties are not necessary parties defendant to this suit, and

That each of the said and hereinafter named parties have, through their attorneys, stipulated that they be dismissed as parties defendant.

The Court, being fully advised in the premises, finds that each and all of the hereinafter named parties are not necessary parties defendant herein, and accordingly it is ordered that those certain defendants hereinafter listed

and each of them be and they are hereby dismissed as parties defendant in this cause without prejudice.

The parties to whom this order applies are:

S. B. Blake; Cluff & Mitchell; Colvin-Jones Consolidated Ditch Co.; John H. Davidson; W. P. Ferris; Jose Gonzales; T. Hinton; Layton & Ison; James Layton; E. D. McEuen; Roy A. Martin; Ed Moody; J. C. Norton; George A. Olney; Asa Packard; N. E. Platt; W. E. Posy; S. A. Powell; Pursley & Hash; Mrs. Mary Reynolds; Bert E. Rose; Smithville Extension Canal Company; Cinaco Tolles; E. L. Tidwell; Louis Voelckel; W. J. Walton; T. W. Wamslee; Estate of Webster; F. A. Webster, Administrator; Estate of J. R. Williams; B. D. Wilson; Young & Ridgway;

Also:

Bank of Duncan; D. E. Barlow; J. W. Becker; Billingsley Canal Company; R. T. Bishop; Harry H. Boyer; Burcher Ditch Company; Estate of W. C. Cheatham; Edward C. Cole; Consolidated Canal Company; J.H.T. Cosper; Cosper-Wilson Canal Company; Ethel M. Cunningham; E. C. DeMoss; Double Circle Cattle Company; Thomas Edwards; Bonnie Elrage; Mangus Elrage; Mrs. Geo. J. Filleman; J. J. Filleman; Franklin Canal Company; Fred J. Fritz; Mrs. Katie Fritz; Furr & Blain; Harve X. Gatlin; Gila Ranch Company; Greenhorn Ditch Company; Greenhorn Irrigating Canal; County of Greenlee; O. C. Greenwell; Ole Hagan; William F. Hagan; S. P. Hale; Francolle Heywood; Mrs. Clara Hicks; County of Hidalgo; Hill Ditch; Francis M. Hodges; Lettie F. Hunt; M. J. Jensen; M. L. Jensen; D. L. Johnson; F. E. Johnson; R. S. Johnson; A. L. Jones; J. H. Jones, Sr., Estate; Martin & Pearson Ditch; Martin &

Pearson Irrigating Canal Company; Arven Mortensen; T. J. Nations; G. C. Payne; C. V. Peery; T. M. Peters; Dell M. Potter; Fred Powell; R. Richardson; Romney Brothers; Romney & Lunt; Rucker Ditch; School District No. 30; J. M. Smolloy; A. F. Smith; The Estate of Spoon, Ire L. Spoon, Adm.; A. G. Stevenson; W. R. Stevenson; Sunset Irrigating Canal Company; W. Plune Tibbots; H. P. Trainor; Virden Ward; Ward & Courtney Dam Company; T. M. Williamson; State of New Mexico.

Also:

Phelps Dodge Corporation; Arizona Copper Company;

Also:

Morenci Water Company;

Also:

Aztec Mutual Canal Company; James LeRoy McCarthy; Richard E. Geyler; Frank C. Elwell.

It is further ordered that the answer of each of said defendents [sic] who may have filed one herein, be and the same is hereby dismissed without prejudice and shall stand as if never filed.

Dated this 30th day of March, 1935.

/s/ [Illegible] Jacobs
Judge of the United States
District Court, in and for
the District of Arizona.